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JOURNAL

OF THE

SOCIETY OF COMPARATIVE LEGISLATION

VOLUME I.—1896–7

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STATEMENT OF THE OBJECTS OF THE SOCIETY

A CONFERENCE, presided over by Lord Herschell, then Lord Chancellor, was held at the Imperial Institute, on December 19, 1894, to consider the best means of furthering the study of Comparative Legislation, as suggested in a paper lately read at the Institute by Sir Courtenay Ilbert, K.C.S.I. The following resolutions were passed :—

Moved by the LORD CHANCELLOR, seconded by SIR ROBERT HERBERT, G.C.B. :—

(1) "That it is expedient to establish a Society of Comparative Legislation, with the object of promoting knowledge of the course of legislation in different countries, more particularly in the several parts of her Majesty's Dominions, and in the United States."

Moved by LORD HOBHOUSE, K.C.S.I., seconded by SIR RAYMOND WEST, K.C.I.E. :—

(2) "That, for this purpose, a Council be formed, with instructions to nominate an Executive Committee, charged with the duty of preparing a Constitution for the Society, and of indicating the best mode of carrying out its objects."

Moved by the LORD CHIEF JUSTICE OF ENGLAND, seconded by Mr. THOMAS RALEIGH :—

(3) "That the Lord Chancellor (Lord Herschell) be the first President of the Society."

These resolutions were the origin of the Society. Some further explanation of its objects, however, may be needed.

They are both practical and scientific. The Society is intended to be of service to legislative bodies, practising lawyers, jurists and students of sociology.

To jurisprudence the Society will apply the comparative method of

investigation, which has already proved fruitful. It will gather together, epitomise, and arrange materials now scattered through many periodicals, or to be found only in official documents of which few libraries contain copies, and it will otherwise endeavour to promote the study of comparative law. Chief among its aims will be the collecting of information as to the Statute law and the forms and methods of legislation in the British Empire and the United States.

In France, Germany, and America similar associations exist; and it has long been matter of surprise that no such society has been formed in the British Empire with its great variety of legal systems. In India, where English, Hindu, and Mahommedan law co-exist, and have affected each other, and where ancient customs of interest to the legal historian are still observed, and in our colonies, dependencies, and possessions, in which French, Roman-Dutch, and Spanish law subsist, will be found a vast field for the work of a Society of Comparative Legislation. In extent and variety, the jurisdiction of the Judicai Committee of the Privy Council, as a Court of Appeal, is unequalled. In a single year it may be called upon to consider questions of constitutional law of moment to all civilized countries, cases dependent on Hindu or Mahommedan law, on texts of the Digest, on the Ordonnances of Louis XIV., on the Coutume de Paris or other portions of the old customary law of France before the Revolution, or on the ancient customs of Normandy. It is somewhat remarkable that there should not have long ago been founded a society for the scientific study and comparison of the very diverse laws brought before the Appellate Court of the colonies and possessions of the British Empire.

Benefits, direct and indirect, from the labours of the Society may be counted upon.

In the British Empire are some sixty legislatures; in the United States are nearly fifty. Each of them is occupied with much the same problems. The same questions as to criminal law and the administration of justice, capital and labour, marriage and divorce, patents and literary property, the regulation of the sale of intoxicating liquors, education, railways, companies, bankruptcy, merchant shipping and mercantile law generally, come from time to time before the British and Colonial Parliaments, and the legislatures of the States of the American Union. Experiments as to similar subjects are being made by more than a hundred legislatures in English-speaking countries.

It is not uncommon, on the introduction of measures into Parliament, to refer to the laws of other countries. At present the results of foreign experiments are only imperfectly and casually brought to the notice of those who might profit by them; and enactments may be proposed and

adopted in one English-speaking community in ignorance of the fact that similar measures have after trial been abandoned or modified in another. Much, it is conceived, might be learned with advantage both as to the substance and as to the form of legislation, and many mistakes might be avoided, if precedents derived from the experience of other countries were collected and studied.

English-speaking races show a tendency towards unity in law. Our colonies borrow the principle and form of many Statutes from England. The United Kingdom also borrows from the colonies. But the open and avowed adoption of Statutes gives no complete idea of the extent of assimilation. Underneath differences of phraseology will be found a tendency to approximation, even in colonies and possessions where the English common law never prevailed. The Roman-Dutch law, for example, in both South Africa and Ceylon, has been modified by the introduction of elements borrowed from English Statute and common law.

Very often the local differences are unimportant and accidental. In the United States are some forty-seven different systems for conducting civil litigation. But for the most part they are based on the New York Code, the English Common Law Procedure Acts, and the Judicature Acts. "While nearly every one of these divers systems is founded upon one or the other of two models, and conforms to its model in all substantial particulars, probably no two of them are alike in every respect." In some colonial Statutes relating to procedure, it is stated that, "unless it is otherwise provided," the procedure shall be regulated by the practice in the Superior Courts in England.

English mercantile law is already to a large extent the law of all English-speaking countries. On this subject the same rules are acted upon, the same decisions and text-books are cited with respect, in all courts of the British Empire and in the United States. The statutory modifications of the *Lex mercatoria* here and elsewhere are similar. The Indian Contract Act, embracing sale of goods, indemnity and guarantee, bailment, agency and partnership, is framed upon English decisions and Statutes. Our colonies and several States of the American Union have passed similar Statutes altering the common law to meet the necessities of modern commerce. The Factors and the Companies Acts are cases in point; they are reproduced, generally with slight modifications, in colonial legislation. In the Cape Colony, where Roman-Dutch law is the basis, the legislature has, by a single Act, incorporated a large part of the commercial law of England (Act 8, 1879). There is still, however, much diversity in the law relating to bankruptcy. In some parts of the British Empire no

bankruptcy law proper exists. In the interest of commerce few legal reforms could be more beneficial than the adjustment and determination of rights in bankruptcy and the administration of bankrupt estates throughout the Empire according to the same principles.

There was a time when it seemed that Roman law might become the law of the world. In the early part of this century, the tendency in countries engaged in codifying their law was to take the Code Civil of France as a model. This is no longer the case. In recent times the tendency, especially as to commercial legislation, is to approximate to English law. It has spread almost as widely as the English language or literature.

In accordance with a plan which has proved successful in the case of the American Bar Association and the *Institut de Droit International*, standing committees, entrusted with separate parts of the work of the Society, have been formed. The number and nature of the committees will depend on the assistance which the Society receives. But the intention is to begin with only a few important subjects.

One result of the labours of the Society may be, it is hoped, to bring about uniformity in regard to the form, numbering, and publication of Statutes; as to which there is now great diversity. Efforts will be made to procure the preparation, on some uniform plan, of a satisfactory index of the Statutes of each legislature; and perhaps it is not too much to hope that we may one day have a general index of the legislation of the British Empire. Mr. Stimson, in his "Digest of the Laws of the States of the American Union," and the University of New York, in its Library "Bulletin," have shown what may be done within a moderate compass. Prepared not solely for the use of the lawyer, such an index as is here suggested might be of use to the statesman and student of sociology.

The services of those who are interested in different parts of comparative jurisprudence will be made use of. In India alone, which is at once, to cite Sir Henry Maine's language, "the great repository of verifiable phenomena of ancient usage and ancient juridical thought," and the scene of some of the most interesting modern experiments in legislation, is a limitless field for work such as the Society seeks to promote. There ancient and modern codes co-exist. In customs and usages, still observed, are legal conceptions of which in the Western world are only obscure traces; and the meeting of several diverse systems of law has given rise to problems akin to those which in the decline of the Roman Empire arose from the contact of its law with the customs and laws of other States.

Here it may be pointed out that in no modern book is there an

adequate treatment of the systems of law in force in the British Empire. The first and only edition of Burge's "Commentaries on Colonial and Foreign Laws" is dated 1838.

Little can be done without co-operation in all parts of the Empire. It is intended to establish branches in the different colonies and possessions. From these branches valuable suggestions may be expected. With them, in great measure, must rest the success of the undertaking. It is desired to enlist the aid in particular of the Governors, Chief-Justices and Judges of our colonies, of Chambers of Commerce throughout the Empire, of the Inns of Court and Incorporated Law Societies, of the Universities, of the Diplomatic and Consular Services, and of the Bar Associations and Statute Revision Commissions in the United States.

The information collected by the Society will be edited, and published in a concise and intelligible form, for the use of members.

The annual subscription is £1 1*s.*, payable to the Society's Bankers, Messrs. Child & Co., 1, Fleet Street, E.C., or to either of the Honorary Secretaries, to whom also any communications as to the Society should be addressed. A donation of £10 10*s.* entitles a subscriber to the privileges of life membership.

So soon as the Society has received sufficient support, it is proposed to apply to the Board of Trade for a licence to incorporate it under s. 23 of the Companies Act, 1867.

PRELIMINARY NOTE AND INDEX TO ARTICLE I.

THE object of the review which constitutes the first article of this Journal is to give some notion of the course of legislation in different parts of the British Empire during the year 1895. To make the picture complete, it would be necessary to describe, not merely what laws have been actually passed, but what laws have been proposed, and also to give an account of the laws existing in each part of the Empire, and—a far more difficult matter—to show how those laws actually work in practice. But considerations of time and space make it impossible to carry out so ambitious a design. We must be content with what the time and materials at our disposal enable us to present, and it is hoped that the following pages, however limited may be their scope, will present features of interest not merely to the professional lawyer, but to the jurist and the sociologist, and to all persons who concern themselves with questions of legislation or administration.

The arrangement of materials raised questions of some difficulty. After many schemes had been discussed, the conclusion ultimately arrived at was that the simplest arrangement would be the best. Accordingly, the scheme adopted was to take the laws passed by each legislature in the order in which they were passed, to reject those which appeared to be of purely local interest, and to arrange the others substantially in the order in which they appear in the Statute book. The marginal notes enable the reader to ascertain at a glance what subjects have been dealt with by each legislature, whilst the index which follows this note shows what subjects have been legislated upon in any part of the Empire.

It would have been desirable to prefix or append to the particular reviews a general review summing up the results of their comparison, somewhat after the fashion adopted by Mr. Albert Gray, in his Notes on American legislation. One would have wished to bring out the points of similarity, and difference between the work of different legislatures; to illustrate the extent to which they have, consciously or unconsciously, followed each other; the differences between their treatment of the same subject; and the influences exercised on their legislation by race and climate, and by social, political, and economical conditions. But here also considerations of time intervened. Such a review could

not have been written until the materials on which it was to be based had been put together; but the collection, summarising, and arrangement of these materials involved considerable labour, and was not completed until the eve of publication.

If such a review had been attempted, it would probably have been found that the Australasian colonies have during recent years supplied the most fertile field of experimental legislation. Our Board of Agriculture will observe with interest the steps which are being taken in those colonies for the development of agricultural industries, for prevention of adulteration, and for protection against disease. Our Home Office may note that Tasmania has been dealing with the subject of employers' liability. The Treasury are possibly already familiar with the Australian legislation on the death duties, and with the steps which have been taken to introduce a graduated income tax into Victoria. "Social legislation" is largely represented. South Australia has been legislating about "children of the State," and Queensland has been attempting to establish co-operative agricultural communities.

The relations between settlers and natives of the country and other questions arising out of race, such as the enjoyment of the franchise and the regulation of labour, supply materials for legislation not only in New Zealand, but in the African and American colonies. An interesting chapter might be written on the native customs which it has been found necessary to formulate, regulate, or prohibit by Statute, and on the strange results of the contact between European civilization and African barbarism. It has been found necessary to legislate against witchcraft in one part of Africa, and to impose severe penalties on "human leopards" in another. In fact, these summaries of legislation are a storehouse of curious and suggestive information for students of comparative politics and comparative sociology.

The legislation of many of the Crown colonies, it will be seen, borrows much from that of the United Kingdom, and many of the adopted Acts are noted for the purpose of showing the course of legislation, even where no new features are added. A notable experiment made by British Guiana in 1894, which has resulted in a complete revision and republication of the Statutes of the colony in a handsome form and with an efficient index, has been adopted in 1895 by St. Vincent, and might with great advantage be followed in other Crown colonies. The powers given to the revisers are however very wide, and could be safely conferred only on trusted and capable law officers.

The following subject index to the Review of British Legislation has been kindly prepared by H. L. Ormsby, Esq.

C. P. I.

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REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1895.[1]

I. BRITISH ISLANDS.

1. UNITED KINGDOM.

[*Contributed by Sir Courtenay Ilbert.*]

Acts passed—*First Session:* Public General, 44; Local, 158.
Second Session: Public General, 6; Local, 15.

THE first Session of 1895 was prematurely terminated by the dissolution of Parliament in June. A second short Session was held immediately after the general election.

The following Acts present features of general interest:—

Poor relief.

The Seed Potatoes Supply (Ireland) Act, 1895 (c. 2), enables the guardians of poor law unions in Ireland to borrow public money for the purpose of providing seed potatoes in impoverished districts in Ireland.

The Outdoor Relief (Ireland) Act, 1895 (c. 22), extended, during a limited period in 1895, the power of poor law guardians in Ireland to grant outdoor relief in food and fuel, and provided that outdoor relief so granted was not to involve any electoral disability.

Colonial Customs duties.

The Australian Colonies Duties Act, 1895 (c. 3), expressly repeals certain enactments which restricted the powers of the Legislatures of the Australian colonies in respect of the imposition of Customs duties.

Colonial boundaries.

The Colonial Boundaries Act, 1895 (c. 34), enables the Queen by Order in Council to alter the boundaries of any colony, and validates certain alterations previously made; but in the case of a self-governing colony the power to alter is not to be exercised without the consent of the colony.

Army.

The Army (Annual) Act, 1895 (c. 7), contains the usual provisions for keeping the Army Act (44 & 45 Vict. c. 58) in force for another year, and makes a few minor amendments in the provisions of that Act.

[1] This review comprises sessions which ended in 1895, whether begun in 1894 or 1895. Sessions which began in 1895 and ended in 1896 are not noticed on this occasion.

UNITED KINGDOM.

Mr. Speaker's Retirement Act, 1895 (c. 10), authorizes the grant of a life annuity to the late Speaker, Mr. Arthur (now Lord) Peel.

Speaker's pension.

Cruelty to animals.

The Cruelty to Animals (Scotland) Act, 1895 (c. 13), brings cock-fighting expressly within the meaning of cruelty to animals under the Act of 1850 (13 & 14 Vict. c. 92).

Finance.

The Finance Act, 1895 (c. 16), is the usual Budget Act. The Budget of 1895 made no alterations of importance in the national system of finance.

Court of Session.

The Court of Session Consignations (Scotland) Act, 1895 (c. 19), amends the procedure with respect to consignations or payments into court in the Court of Session in Scotland.

Tramways.

The Tramways (Ireland) Act, 1895 (c. 20), enables the Treasury to commute for a capital payment their liability in respect of guaranteed dividends on the share capital of Irish tramway companies. Under an Act of 1883 (46 & 47 Vict. c. 43) the construction of these tramways in Ireland has been in some cases aided by guaranteeing the payment of dividends out of baronial rates supplemented by contributions from the Treasury.

Seal fishery.

The Seal Fisheries North Pacific Act, 1895 (c. 21), supersedes the Act of 1893 for the regulation of the seal fisheries in the North Pacific Ocean. It provides for the establishment of a close season for the fisheries of the fur seal in Behring Sea and adjacent parts of the Pacific Ocean, and supplies machinery for enforcing its regulations by detention of ships and their papers, and by fine. The Act supersedes and repeals the Seal Fisheries (North Pacific) Act, 1893 (56 & 57 Vict. c. 23), but its provisions are to be read in addition to those of the Behring Sea Award Act, 1894 (57 & 58 Vict. c. 2).

Volunteers.

The Volunteer Act, 1895 (c. 23), extends the powers of calling out volunteers in a case of national emergency.

Distress.

The Law of Distress Amendment Act, 1895 (c. 24), supplements an Act which was passed in 1888 (51 & 52 Vict. c. 21) for preventing abuses by bailiffs and other officers employed to levy distresses for rent. In particular it gives county court judges wider powers of dealing with the certificates of such bailiffs.

Solicitors.

The Mortgagees Legal Costs Act, 1895 (c. 25), enables a solicitor to charge for mortgage costs when he is himself the mortgagee.

Friendly societies.

The Friendly Societies Act, 1895 (c. 26), makes in the law relating to friendly societies sundry minor amendments which had been recommended by the representatives of the principal societies.

Landlord and tenant.

The Market Gardeners' Compensation Act, 1895 (c. 27), extends the power of market gardeners to make improvements for which they can claim compensation from their landlords under the Agricultural

Holdings (England) Act, 1883 (46 & 47 Vict. c. 61). In particular it dispenses with the condition of landlord's consent to certain classes of improvements, such as planting fruit bushes and the like. *UNITED KINGDOM.*

The False Alarms of Fire Act, 1895 (c. 28), imposes a penalty for giving false alarms of fire to a fire brigade. **Fire.**

The Extradition Act, 1895 (c. 33), was passed with special reference to the case of Dr. Cornelius Herz. It enables a magistrate to be sent into the country to take the deposition of a person whose extradition is demanded if there is reason to believe that he cannot be brought up to London without risk to life or health. **Extradition.**

The Naval Works Act, 1895 (c. 35), authorises the grant of £1,000,000 for the purpose of carrying out certain specified works at Gibraltar, Dover, and elsewhere. The money is to be borrowed by means of terminable annuities. **Naval works.**

The Fatal Accidents Inquiry (Scotland) Act, 1895 (c. 36), provides for the holding of public inquiries on the occurrence of fatal accidents in the course of industrial employments or occupations in Scotland. **Fatal accidents.**

The Factory and Workshop Act, 1895 (c. 37), makes several important alterations in the law relating to factories and workshops, mainly in the direction of increasing sanitary requirements, giving additional precautions for safety, and restricting the hours of employment. It defines what is to amount to overcrowding (s. 1). It enables orders to be made prohibiting the use of dangerous buildings and machines (ss. 2, 4). It prohibits the employment of persons in places injurious to health (s. 5), and imposes penalties on allowing wearing apparel to be made in places where there is infectious disease (s. 6). It increases the safeguards against risks from machinery (ss. 7, 8, 9), and requires the provision of movable fire escapes (s. 10). It provides for the representation of workmen on any arbitration as to the special rules to be applied to a particular factory (s. 12). It restricts the amount of overtime during which women and young persons may be employed (s. 14), and the employment of children, young persons, and women outside and inside a factory or workshop on the same day (s. 16). It amends and extends the provisions as to notice of, and inquiry into, and register of, accidents (ss. 18–21). It places laundries under the Factory Acts (s. 22). It applies to docks, wharves, quays, and warehouses, the provisions of the Factory Acts with respect to penal compensation for injuries caused by neglect to fence, and with respect to accidents, the powers of inspectors, the power to make special rules for dangerous employments, and the power to make orders as to dangerous machines. And it applies to certain large buildings the **Factories.**

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provisions of the Act with respect to notice and formal investigation of accidents (s. 23). In the case of tenement factories, *i.e.* large buildings let out in parts under such circumstances that each part constitutes a separate factory, it imposes on the owner certain obligations, which in other cases attach to the occupier (ss. 24, 25). It increases the stringency of the sanitary provisions as to bakehouses, and prohibits the use of any place underground as a bakehouse (s. 27). It enables the Secretary of State to prohibit or restrict by means of special rules or requirements employment in dangerous trades (s. 28). It requires notification of certain diseases, such as lead poisoning and anthrax (s. 29), makes obligatory the use of lavatories in places where lead, arsenic, or any other poisonous substance is used (s. 30), extends to all humid factories certain provisions previously applying to cotton cloth factories (s. 31), and requires adequate measures to be taken for securing and maintaining a reasonable temperature in factories and workshops (s. 32). It provides for annual returns of persons employed in factories and workshops (s. 34), and amends the provisions of the Act of 1891 as to the particulars respecting wages to be furnished to the workers in certain cases (s. 40). It extends the provisions of the law as to notice of workshops (s. 41), and lists of out-workers (s. 42), and makes sundry other minor alterations in the law relating to factories and workshops.

Married women.

The Summary Jurisdiction (Married Women) Act, 1895 (c. 39), enables courts of summary jurisdiction, *i.e.* justices and stipendiary magistrates, to make an order, which is to have the effect of a decree of judicial separation, in the case of cruelty or neglect by a husband, and to provide for the legal custody of children, and for the maintenance of the wife. An appeal lies from any such order, or from the refusal of an order, to the Probate and Divorce Division of the High Court.

Corrupt practices.

The Corrupt and Illegal Practices Prevention Act, 1895 (c. 40), declares the making or publication of false statements about a candidate before or during a parliamentary election an illegal practice within the meaning of the Corrupt and Illegal Practices Acts.

Sea fisheries.

The Sea Fisheries Regulation (Scotland) Act, 1895 (c. 42), reconstitutes the Fishery Board for Scotland, establishes sea fishery districts under district committees with appropriate powers, and gives power to make byelaws for regulating sea fisheries, prohibiting seine trawling in certain localities, restricting beam trawling and otter trawling, and regulating mussel fisheries.

Naturalization.

The Naturalization Act, 1895 (c. 43), makes the residence of a child of a naturalized British subject with his father while in the service of the Crown out of the United Kingdom have the same effect for the

purposes of naturalization as residence with the father in the United Kingdom. *UNITED KINGDOM.*

The Judicial Committee Amendment Act, 1895 (c. 44), strengthens the Judicial Committee by adding to it any person who, being or having been Chief Justice or a judge of the Supreme Court or a superior court in Canada, the Australasian colonies, the Cape, or Natal, or any other superior court named in that behalf by the Queen in Council, is a privy councillor. **Judicial Committee.**

The six public general Acts passed in the second session of 1895 are not of sufficient general interest to require notice here.

2. CHANNEL ISLANDS.

[*Contributed by Sir Courtenay Ilbert.*]

The States of Guernsey and Jersey have power to make laws subject to the approval of the Queen in Council. There is no fixed time for the sessions of the States: they are convened in each case by the Bailiff whenever business requires. The laws are not numbered, and their titles do not contain any reference to any particular session or year. The language is French. The following extract from an Order in Council of 1895 illustrates the form assumed by legislation:—

"AT THE COURT AT WINDSOR,

The 11th day of May, 1895.

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY.

Lord President.	Speaker of the House of Commons.
Lord Chamberlain.	Mr. Arnold Morley.
Lord Kensington.	

"WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee[1] of Council for the Affairs of Jersey and Guernsey, dated the 21st day of March, 1895, in the words following, viz.—

"'YOUR MAJESTY having been pleased by Your General Order of Reference of the 21st day of March, 1862, to refer unto this Committee a letter from the Greffier of the island of Jersey, transmitting an Act passed by the States of that island on the 14th day of February, 1895, intituled "Loi sur la Procédure

[1] In an Order relating to Guernsey the Committee is described as the Committee of Council for the Affairs of Guernsey and Jersey.

CHANNEL ISLANDS.

devant la Cour Royale (Jours Fériés)": THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have this day taken the said Act into consideration, and do agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to approve of and ratify the said Act.'

"HER MAJESTY, having taken the said Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve thereof, and to approve of and ratify the said Act, and to order, as it is hereby ordered, that the same Act (a copy whereof is hereunto annexed), together with this Order, be entered upon the Register of the Island of Jersey, and observed accordingly: Whereof the Lieutenant-Governor or Commander-in-Chief, the Bailiff and Jurats, and all other Her Majesty's Officers, for the time being, in the said island, and all other persons whom it may concern, are to take notice, and govern themselves accordingly.

"C. L. PEEL."

"AUX ETATS DE L'ILE DE JERSEY.

"LOI SUR LA PROCÉDURE DEVANT LA COUR ROYALE[1]

(Jours Fériés).

"L'AN mil huit cent nonante-cinq, le quatorzième jour de Février.[2]

"Considerant que l'expérience a démontré que plusieurs des dispositions des Lois en vigueur sur la Procédure devant la Cour Royale empêchent la Cour, dans certains cas, de siéger le Samedi;

"Que la non tenue de la Cour Royale, ce jour-là, est souvent contraire aux intérêts des plaideurs et tu public;

"Que, de plus, l'ouverture de l'Assise Criminelle a souvent lieu le Samedi, qui est le jour de la semaine, dans l'Ile, le plus affecté aux affaires commerciales, ce qui souvent cause un préjudice considérable aux commerçants et autres appelés a servir comme Hommes d'Enquête;

"Qu'il serait, par conséquent, utile d'apporter certaines modifications auxdites Lois.

"Les Etats ont résolu, moyennant la sanction de Sa Très Excellente Majesté en Conseil, d'établir la Loi suivante."

Then follow five articles[3] regulating the days on which the Royal Court may sit, and repealing certain enactments of earlier date.

[1] In the case of Guernsey, the measure scheduled to the Order in Council is described as a "Projet de Loi," or Bill, not as a "Loi."

[2] There are no preambles to the Guernsey laws of 1895.

[3] The sections of Guernsey laws are not described as articles. There are no marginal notes.

CHANNEL ISLANDS.

The States of Jersey in 1895 passed the law referred to above relating to the Royal Court, and also laws modifying the constitution of the "Conseil d'Administration" of the Jersey Prison, regulating the affairs of the "Societé de Bienfaisance pour la Marine Marchande," and applying to the island certain provisions of the Criminal Law Amendment Act, 1885 (48 & 49 Vict. c. 69).

The only other Jersey Act of 1895 relates to a local work at St. Helier.

The States of Guernsey passed a law about colportage, under which hawkers and pedlars must be licensed, and a law about certified reformatory schools which follows the lines of English legislation.

3. ISLE OF MAN.

[*Contributed by Llewellyn Kneale, Esq.*]

Seventeen Acts, passed in 1895, are now in force as law. Other Acts were passed, but are not in force, as they have not yet received the Royal assent, or have not yet been promulgated.[1]

Cruelty to animals.

The Cruelty to Animals Amendment Act, 1895, declares that not supplying an animal with sufficient food and water is ill treatment within the meaning of the principal Act of 1853, and that the putting or keeping out of an animal to graze in any place where there is not sufficient food is *primâ facie* evidence of ill treatment.

Sale of goods.

The Sale of Goods Act, 1895, adopts, with slight modification to suit insular requirements, the Sale of Goods Act, 1893, (56 & 57 Vict. c. 71), so as to make the law of England and the Isle of Man similar.

Uniforms.

The Uniforms Act, 1895, extends to the Isle of Man the provisions of 57 & 58 Vict. c. 45.

Weights and measures.

The Weights and Measures Amendment Act, 1895, provides that a weight or measure duly stamped under the law in force for the time being in the United Kingdom shall, unless false or unjust, be of the same effect as if stamped under the insular Weights and Measures Act.

[1] There are no regular legislative sessions in the Isle of Man. Each Act has a short title, by which alone it is cited. The enacting words are: "Be it enacted by the Queen's Most Excellent Majesty, by and with the advice of the Lieutenant-Governor, Council, Deemsters, and Keys in Tynwald assembled, and by the authority of the same, as follows," etc. The Acts are confirmed by the Queen in Council, after reference to a committee of Council. The confirmation is notified to the Lieutenant-Governor by the Home Secretary, and the Act is promulgated on Tynwald Hill.

ISLE OF MAN.

The Advertising Rate Act, 1895, provides for a grant of money to advertise the island as a pleasure and health resort.

Advertising rate.

Customs.

The Revenue Return Amendment Act, 1895, provides for the making of a return of wines, spirits, or any other goods, wares, or merchandise, liable to duty. The Act was passed in order to facilitate arrangements between the United Kingdom and the island with respect to the Customs. The returns of tea, coffee, and tobacco had been provided for by a previous Act.

Crown revenues.

The Local Government and Common Lands Act, 1895, contains provisions for the redemption of certain ancient chief rents, commonly called the Lord's rents, payable to Her Majesty.

Act of Parliament.

The Promulgation Act, 1895, alters the mode of promulgating Acts of Tynwald. In future, when an Act is to be promulgated from Tynwald Hill in accordance with ancient custom, there is to be read a brief statement in Manx and in English showing the object and purport of the Act and the Royal consent, and this, together with the reading of the title of the Act, is to be held to be the promulgation of the Act. After the promulgation is over, the certificate, or attestation of the promulgation written at foot of the Act, is to be signed by the Governor and Speaker, instead of, as heretofore, by all the members of the Legislature.

Adulteration.

The Adulteration Amendment Act, 1895, enacts for the Isle of Man, ss. 1, 2, 3, and 6 of the Fertilizers and Feeding Stuffs Act, 1893 (56 & 57 Vict. c. 57), and provides for the analysing of fertilizers and feeding stuffs by a public analyst. The Act also enacts for the Isle of Man ss. 2, 3, and 5 of the Adulteration of Seeds Act, 1869 (32 & 33 Vict. c. 112).

Intoxicating liquor.

The Licensing Amendment Act, 1895, creates a new departure in the licensing law. Each of the four districts into which the island is divided is to have a licensing board, consisting of the High Bailiff (stipendiary magistrate), the members of the House of Keys representing any constituency wholly or partly within the district, the justices resident within the district, the captain of each parish, and the chairman of town and village commissioners within or partly within the district. Once in each year the board are to meet, and are to select from among themselves six members, who, together with the High Bailiff, are to form the Licensing Court for one year for the district. A Licensing Appeal Court is also formed. The Douglas District Licensing Board are once in each year to elect two members, and each of the other District Boards are once in each year to elect one member, and the five members so elected, together with the four high bailiffs, are to form an Appeal Court.

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Each Licensing Court is to be a court of justice, with power to take evidence on oath or otherwise, and act on its own knowledge of the wants or requirements of a locality or neighbourhood.

The Licensing Appeal Court is to be a court of justice, and on the hearing of any case is to consider the evidence taken in the district court, but is to have full discretionary power to receive further evidence on questions of fact, and to have full power to act on its own knowledge of the wants or requirements of a locality or neighbourhood.

Questions of law are excluded from the jurisdiction of the Appeal Court, and are to be brought before the High Court of Justice.

The Act also makes provision for the granting of short term licences.

Church of England.

The Church Act, 1895, amends and extends the provisions of the Church Act, 1880, and the Ecclesiastical Residences and Dilapidations Act, 1879. It establishes a Cathedral Chapter and four Canonries, and deals with certain Church properties and trusts.

Marriage.

The Marriage Law Amendment Act, 1895, makes certain amendments in the Marriage Act, 1849, and the Dissenters Marriage Act, 1849. The Act also deals with marriages in the parish church of Braddan. If one of the persons to a marriage at the time of the publication of the banns in this island is resident in the United Kingdom, it is to be sufficient that the banns are also published in the church of the place where the person is resident according to the laws of the United Kingdom. The hours during which marriages may be performed are extended to between 8 o'clock in the morning and 4 o clock in the afternoon.[1] Residence in a parish is reduced to fifteen days, and three clear days' notice must be given to the Surrogate or to the Registrar before a licence is granted.

II. BRITISH INDIA.

[*Contributed by Sir Courtenay Ilbert.*]

BESIDES the Governor-General's Council, there are four local Legislatures in British India—those of the presidencies of Madras and Bombay, of the province of Bengal, and of the province constituted for legislative purposes by the North-West Provinces and Oudh.

[1] The hours in England are now from 8 a.m. to 3 p.m. (49 Vict. c. 14).

BRITISH INDIA.

The Governor-General, apart from his Council, has also power, under 33 Vict. c. 3, to make regulations for the more backward regions known as the scheduled districts.

(1) ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Criminal law. The Governor-General in Council passed twenty-one Acts in 1895. Some of them made alterations in the general Indian Codes.

Act III of 1895 amends the Indian Penal Code by altering in form one of the sections (182) about false information, and supplying an additional illustration, by adding new penalties for dealing in fictitious stamps, by amplifying the provisions of the section (294) about obscene acts and songs, and by making more specific provision for punishing falsification of accounts by clerks, officers, or servants. The same Act also amends the Whipping Act (VI of 1864), by throwing into groups the offences for which whipping may be inflicted either on first or second conviction, so as to make the provisions as to second conviction apply to any offence of the same group.

Criminal procedure. Act IV makes a slight amendment in the provisions of the Code of Criminal Procedure (s. 366) as to the mode of delivering judgments.

Civil procedure. Acts VII and XIII amend the Code of Civil Procedure. The amendments made by Act VII are of trifling importance. Act XIII enables the chartered High Courts to regulate their own civil procedure by rules, which are to take effect in supersession of the provisions in the general Code.

Transfer of property. Act XV declares that the general provisions contained in the Transfer of Property Act, 1882, are not to apply to Crown grants of land.

Small Cause Courts. Act I alters the qualification of judges of the presidency Small Cause Courts, and authorizes the High Courts to make, instead of merely approving, rules of procedure for those courts.

Contagious Diseases Act. Act V amends certain provisions of the Cantonments Act with respect to prostitutes. It prohibits the making of any regulation which gives legal sanction to prostitution.

Debtor and creditor. Act VI makes some further amendments in the complicated series of Acts which regulate the special procedure applied to questions between agriculturists and money lenders in certain districts of the Dekkhan. The definition of "money" includes agricultural produce, implements and stock, and that of "standing crops" includes "juice in trees and shrubs."

Police. Act VIII amends the general Police Act of 1861. It makes further provisions for the quartering of additional police in disturbed or

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dangerous districts, and for making the inhabitants of the district liable to pay compensation for damage or injury. It also gives further power to regulate public assemblies and processions.

Extradition. Act IX provides for the more convenient administration in British India of the Imperial Extradition Acts of 1870 and 1873, by conferring certain powers under those Acts on presidency and district magistrates.

Railway companies. Act X authorizes Indian railway companies under certain restrictions to pay interest out of capital during construction.

Company law. Act XII applies to British India provisions, corresponding to those contained in the English Companies (Memorandum of Association) Act, 1890 (53 & 54 Vict. c. 62).

Pilgrims. Act XIV provides for the regulation of pilgrim ships. It defines a pilgrim as a Mahommedan passenger going to or returning from the Hedjaz, and lays down an elaborate code of regulations with special reference to cholera and similar diseases.

Statute Law revision. Act XVI is an Act of the same nature as the Statute Law Revision Acts which are periodically passed in England. It repeals sundry obsolete enactments, and amends sundry verbal slips or misprints in existing Acts.

King Thebaw. Act XX incapacitates ex-King Thebaw from binding himself by any legal contract, and provides for the settlement by a special committee of all claims against him. A similar provision, it may be remembered, was found necessary in the case of the late ex-King of Oudh.

(2) MADRAS ACTS.

The Madras Legislature passed three Acts in 1895.

Hereditary village offices. Act III gives further powers for regulating hereditary village offices, such as those of the village carpenter, blacksmith, barber, washerman, potter, astrologer, and priest. The other two Acts relate to small local details.

(3) BOMBAY ACTS.

The Bombay Legislature passed two Acts in 1895, one relating to the Aden Port Trust, and the other to Bombay tramways.

(4) BENGAL ACTS.

The Bengal Legislature passed eight Acts in 1895.

Revenue. Act I consolidates and amends the procedure for the recovery of public demands, which roughly corresponds to revenue procedure in England.

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Act III supplements the Bengal Tenancy Act by providing for the maintenance of records of tenant rights in Bengal, and for the recovery of the cost of cadastral surveys and settlements.

Landlord and tenant.

Lepers.

Act V provides for the segregation of pauper lepers, and the control of lepers exercising certain trades. It may be compared with the Natal legislation about lepers.

Drainage.

Act VIII provides an elaborate machinery for carrying out works of sanitary drainage.

(5) N.W. PROVINCES AND OUDH ACTS.

The Legislature of the North-West Provinces and Oudh passed two Acts in 1895, amending in certain details the Acts relating to local municipalities and local waterworks.

(6) REGULATIONS UNDER 33 VICT. c. 3.

Five regulations were made under 33 Vict. c. 3.

Hill tribes.

Regulation I supplies a good illustration of the kind of law that is required for wild frontier tribes. It gives large powers for dealing with the Kachin Hill Tribes, including power to appoint headmen with limited criminal jurisdiction, and powers to impose fines on villages for collusion with criminals and on tribes, communities, or clans in cases of murder, to take action against disaffected tribes, to remove villages, and to regulate the possession of arms and ammunition.

The other four regulations are of merely local interest.

III. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by the Hon. S. Gatty, Chief Justice.*]

Ordinances enacted, 23.

Of the Ordinances enacted during the year 1895, the following extend to Gibraltar the substantial provisions of Imperial Statutes on the same subjects:—

No. 1. The Uniforms Ordinance follows 57 & 58 Vict. c. 45.

No. 5. The Settled Lands Ordinance follows 47 & 48 Vict. c. 18, and 53 & 54 Vict. 69.

No. 6. The Truck Ordinance follows 1 & 2 Will. IV. c. 37 and 50 & 51 Vict. c. 46.

No. 7. The Oaths Ordinance follows 51 & 52 Vict. c. 46.

No. 8. Law of Libel Ordinance follows 51 & 52 Vict. c. 64.

No. 9. Factors Ordinance follows 52 & 53 Vict. c. 45.

No. 10. Arbitration Ordinance introduces 52 & 53 Vict. c. 49.

No. 11. Partnership Ordinance follows 53 & 54 Vict. c. 39.

No. 12. Custody of Children Ordinance follows 54 Vict. 3.

No. 13. Slander of Women Ordinance follows 54 & 55 Vict. c. 51.

No. 14. Penal Servitude Ordinance follows 54 & 55 Vict. c. 69.

No. 15. Conveyancing and Law of Property Ordinance follows 55 & 56 Vict. 13.

No. 16. Accumulations Ordinance follows 55 & 56 Vict. c. 58.

No. 17. Voluntary Conveyances Ordinance follows 56 & 57 Vict. c 21.

No. 18. Trustee Ordinance follows 56 & 57 Vict. c. 53.

No. 19. Married Women's Property Ordinance enacts the provisions of 56 & 57 Vict. c. 63.

No. 20. Sale of Goods Ordinance follows 56 & 57 Vict. c. 71.

The remaining Ordinances are of purely local interest, relating—No. 22, to electric lighting; No. 2, to the administration of a local charity; Nos. 21 and 23 to the powers of the Local Sanitary Commission. No. 3 corrects an accidental error in the law affecting the collection of jetty dues, and legalizes port transactions. No. 4 authorizes constables to arrest without warrant, persons sketching or photographing without permission, and to seize drawings, photographs, and materials and apparatus.

2. MALTA.[1]

[*Contributed by H. L. Ormsby, Esq.*]

Ordinances passed, 15.

Ballot.

Ord. No. 5 (as amended by the Secretary of State) deals with elections, and amends Ord. No. 7 of 1886, by providing for vote by ballot, and for the voting of illiterate voters.

Fidei commissum.

Ord. No. 6 enacts that when property subject to *Fidei Commissum* is expropriated on the ground of public utility, the Court may order the indemnity (if not less than £50), to be applied in the purchase of a 2½ per cent. annuity secured on the revenue of Malta.

[1] These Ordinances are published in English and Italian, and none of them have short titles.

MALTA.

In this case the capital of the annuity is to be substituted under the *fidei commissum.*

The court has a similar power in the case of property of persons under disability, and of money assigned to a wife on separation, or in security of dower or *dotorium*, and of property subjected to *fidei commissum* revoked on grounds other than that of public utility.

The same Ordinance also deals with the registration of pledges and alienations of annuities, and enacts that actions for annual payment are to be barred after five years.

Registration of hypothecations. Ord. No. 13 deals with the registration of certain privileges and hypothecations, and requires registration to be renewed before the expiration of thirty years, or if the thirty years expired before the date of the Ordinance (May 17, 1895), within three years from that date.

3. CYPRUS.[1]

[*Contributed by H. L. Ormsby, Esq.*]

Laws passed, 21.

Wild birds. The Wild Birds Law, 1895 (No. III), repeals the Wild Birds Law, 1884 (Law No. VII, 1884), which excluded woodcocks, snipe, wild ducks, teal, passenger turtle doves, and any birds notified by the High Commissioner from the operation of the Wild Birds Protection Law, 1883.

Wild ducks of all kinds, snipe, and woodcocks, however, may be killed between September 1 and March 15, and the High Commissioner may at any time grant permission to kill any wild bird or to take its eggs for scientific purposes.

Uniform. The Uniforms Law, 1895 (No. IV, 1895), follows the Imperial Statute of 1894 (57 & 58 Vict. c. 45).

Registration of judgments. The Civil Procedure Amendment Law, 1895 (No. VII), deals with the registration of judgments. Before making an order prolonging the registration of a judgment, the Court is to be satisfied that the judgment was not obtained by collusion.

Post-office. The Post-office Law, 1895 (No. XIII), allows the opening in the presence of the addressee of letters or postal packets bearing fictitious stamps, or stamps that have been used before, for the purpose of discovering the sender.

Ejectment. The Recovery of Possession of Small Holdings Law, 1895 (No. XV), tenants whose terms are less than two years, and whose rentals do not

[1] Cyprus, by reason of its administration under the Colonial Office, is treated as a British colony.

exceed £20, may be ejected by process of law on the determination of their tenancies. Notice of intention to apply to a magistrate for an order must be given. The order is, if necessary, to be enforced by peace officers.

Registration of births and deaths.

The Births and Deaths Registration Law, 1895 (No. XVI), deals with the registration of births and deaths, and provides that notices of births are to be given by the parents to the Registrar within thirty-one days of the birth, and allows the Registrar to require information if the thirty-one days elapse without notice being given.

An increased fee is payable on registration after the thirty-one days.

In case of children found exposed, the person finding the child is to give notice to the Registrar within seven days.

In case of death notice is to be given within twenty-four hours, and similar provisions apply. The law also provides for certificates of the cause of death being given by medical practitioners, while in case of inquests the finding of the jury is substituted.

Forms of registers are scheduled to the law.

Education.

The Education Law, 1895 (No. XVIII), is an important measure. It deals with the subject of elementary education, and provides for a duplicate system of schools and authorities for the Moslem and for the Greek Christian inhabitants of Cyprus, and reserves power to make similar provisions for other religious bodies.

Two boards, for Moslem and Greek Christian education respectively, are created, under which district committees are to act. The latter are to select the particular villages in which they recommend schools to be established.

When a school is established in a village, a village committee is set up. This committee is to be elected by the tax-paying inhabitants of the village who are of the particular religion in question.

It has powers to appoint and dismiss teachers, to fix their salaries, to assess the school fees payable by the tax-paying inhabitants interested in the school.

In default of the village committee these powers are exercisable by the district committee.

The law also deals with the qualification of teachers (including Moslem schoolmistresses), and provides for the expenses of the system partly by Government grants, and partly by payments by the tax-paying inhabitants who are of the particular religion for the benefit of members of which the school is established.

Wills and successions.

The Wills and Succession Law, 1895 (No. XX), enacts, with certain differences, the English law of wills, probate, and administration.

CYPRUS.

The more noteworthy features of the law are as follows :—

S. 4 enacts that the law applies—

(*a*) To all property of persons domiciled in Cyprus.

(*b*) To the immovable property of persons not domiciled in Cyprus.

S. 11. Posthumous children take equally with those born in the father's lifetime.

S. 12. Nationality is no bar to succession.

S. 13. A conviction for killing with premeditation (or attempt) either the person whose property forms the succession, or his (or her) child, parent, or spouse, bars the person convicted from succeeding, as does (s. 14) fraud or undue influence.

S. 15. Incapacity may be condoned by express instrument of the testator (or intestate person).

S. 16. The successors of an incapacitated person are not barred, but take as if that person were dead.

S. 19 limits the power of disposition of a testator—

(*a*) If the testator leaves a spouse and issue, to one-third of his estate.

(*b*) If the testator leaves no spouse but issue, to one-half.

(*c*) If the testator leaves a spouse but no issue, to two-thirds.

(*d*) If the testator leaves neither spouse nor issue, he can dispose of the whole of his estate.

The portion so disposable is called the disposable portion; the remainder, including any part not disposed of by will, the legal portion.

S. 22. Wills are to be in writing, signed at the end by, or by direction of, the testator; such signature to be made or acknowledged in the presence of *three* witnesses, and attested by them.

If there are more sheets than one each sheet is to be initialled by the testator and the witnesses.

Witnesses are to be at least eighteen years of age, and able to write their names.

No benefit under the will can accrue to a witness.

S. 25. Bequests to persons not in being at the death of a testator are void, with the exception of posthumous children of the testator.

S. 26. A testator having relations within the third degree (*i.e.* counting upwards to the common ancestor and down to the relation; *e.g.* a nephew or great-grandson is in the third degree) cannot leave property for religious uses, except by a will made at least fifteen days before death.

S. 27 deals with the revocation of wills, and follows the English law,

except that the birth of a firstborn child revokes a will, and that a will made in contemplation of a marriage (or of such a birth) is not revoked. CYPRUS.

S. 28 allows gifts in contemplation of death to be made in the presence of *two* witnesses. Such gifts are avoided by recovery, or by the donee predeceasing the donor (s. 29). Such gifts are to be treated as specific legacies.

S. 39 deals with the rights of a surviving spouse. If there be issue, the spouse takes one-sixth of the legal portion, or if there be more than five children, a share equal to a child's share. If there be no issue, but ancestors or descendants of ancestors within the sixth degree, the spouse takes one-third; if there be no relations within the sixth degree, the spouse takes the whole of the legal portion.

S. 40 provides that where a legacy is given to a person entitled to a share of the legal portion, he need not bring it into hotchpot, but where a child has been advanced he must bring the sums advanced into hotchpot, unless the will expressly states that he need not.

S. 43 deals with the distribution of the legal portion, and follows the English law of distribution, except that brothers and sisters of the half blood only take a half share, and that if there are no relations within the tenth degree, the deceased is to be held to have had no heirs, and none of his kindred beyond the tenth degree is in any manner entitled to any share in the legal portion.

S. 56 deals with acceptance and renunciation of inheritances. Acceptance makes the beneficiary liable for the debts of the deceased, up to the amount of his interest. It does not extinguish a debt due from the deceased to the beneficiary.

S. 61. On failure of heirs, all property of the deceased, except *Vacouf property*,[1] escheats to the Crown, and Vacouf property devolves on the superior.

SS. 62, 63 provide savings for the rights of monasteries and Moslem. A form of will, probate forms, and a table of degrees are scheduled to the law.

The Outlaws Proclamation Law, 1895 (No. XXI), provides for and regulates the outlawry of persons guilty of the following crimes:— Homicide, or attempt; rape; unnatural offences; abduction; robbery with violence; arson; forgery; animal stealing; escape from prison, if convicted of any of the preceding offences. Outlawry

The law also enacts that debts due to the outlaw may be recovered

[1] Vacouf property is land possessed in mortmain, and held by a kind of copyhold (see Ouley's "Translation of the Ottoman Land Code").

CYPRUS. by the Queen's Advocate, and that the property of the outlaw may be sold and applied: first, in payment of his debts; secondly, in compensation to persons injured by the outlaw; and thirdly, for the support of the family of the outlaw.

IV. EASTERN COLONIES.

1. CEYLON.[1]

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 18.

Merchant Shipping (Passengers). No. 4 of 1894 enables criminal proceedings to be taken in Ceylon for offences against certain provisions of the Indian Native Passenger Ships Act, 1887 (Act X of 1887). It is a somewhat clumsy piece of legislation. The offences are five or six in number—Carrying passengers without the necessary certificates, failing to post up certificates, failing to produce statement of passengers, failing to provide requisite food to passengers, carrying passengers in excess of number allowed by the certificate, landing at places other than those at which the master has contracted to land. For the purposes of these few provisions the whole Indian Act of fifty-seven sections is scheduled to the Ordinance.

Post-office. No. 6 of 1894 enables postal officials to detain postal packets bearing fictitious stamps.

Customs. No. 8 of 1894 abolishes the import duty on certain metals used in manufactures (sheet brass, iron, lead, tin, zinc) tin plates, etc.

Village communities. No. 9 of 1894 amends the Village Communities Ordinance, 1889, which was a re-enactment, with consolidation of subsequent amendments, of a useful measure originally passed in 1871. The law of 1889 is applied to divisions of chief headmen by the Governor in Council. The Act establishes (1) Village Councils and (2) Village Tribunals. The village councils, elected for subdivisions—that is, for villages or groups of villages—pass rules for divers purposes, such as constructing and maintaining village paths, bridges, markets, burial places, school-rooms, court-houses, village tanks, etc.; in fact, for nearly all the administrative wants of village life. The village tribunals have both civil and criminal jurisdiction in petty cases. The Ordinance now in question removes doubts as to the power of village councils to pass rules for imposing and enforcing an annual tax payable in labour for

[1] The session of 1894-5 begins with No. 5 of 1894 and ends with No. 3 of 1895.

such works of construction and maintenance as are above described. Not more than ten days' labour may be imposed in any one year.

Mines and minerals.

No. 10 of 1894 amends the Gemming Ordinance (No. 5) of 1890. The preamble of that law stated that "it is expedient to provide for the better protection of the prerogative rights of the Crown in respect of all gold, silver, gems, or precious stones which may be found in the mines in private lands in this colony, and for the regulation and inspection of such mines." It provided that a person may not work a mine without a licence from the Government agent of the province (corresponding to a collector in India). There was a stamp duty of Rs. 5 on the licence. He must show a *primâ facie* right to work the mine. He was further required to have a permit for every person employed or permitted to work in the mine, and on such permit there was a duty of 75 cents. The amending Ordinance of 1894 reduces the duty of Rs. 5 to R. 1, and abolishes the permits.

Legal profession.

No. 11 of 1894 contains a novel enactment. The preamble recites that "it is expedient to provide against the mischief caused by touts and vagrants meddling with parties who seek redress in courts of justice." The Ordinance comprises two operative sections. One makes it an offence to ask, receive, or retain any gratification in respect of the employment, or procuring the employment, of a legal practitioner, either from him, or from another legal practitioner, or from another person. This clause is intelligible enough. The second (s. 5) provides that "any person who without lawful excuse, accosts, or attempts by words, signs, or otherwise, to meddle with any suitor or other person having business in any court, shall be guilty of an offence, etc." A case has already gone in appeal to the Supreme Court from the decision of a magistrate convicting the appellant of meddling with a suitor. The judge in appeal pertinently asked what is "accosting"? Is accosting by a friend prohibited? When does a person become a suitor? Is he protected only while in court, or also in his village and throughout the whole period of a protracted law suit? In the case in question, the appellant had recommended his own godson to employ a particular practitioner; whereupon proceedings under the Ordinance were taken, not by the godson, but by a rival practitioner! The Supreme Court acquitted the appellant.

Court records.

No. 12 of 1894 provides for the destruction of valueless documents preserved in the record rooms of courts of justice. Among the classes of documents not to be destroyed are the following:—Land cases, testamentary cases, matrimonial cases, guardianship cases, insolvency cases, lunacy cases in which a person has been adjudged insane, cases decided in appeal, and "other cases of public interest." Other classes

CEYLON.

of documents may be destroyed subject to certain provisions and conditions. All the summonses, subpœnas, and other intermediate processes in cases of the excepted classes may be destroyed, except in cases determined not more than ten years.

Convicts and habitual criminals.

No. 17 of 1894 adapts for colonial purposes the provisions of the English Penal Servitude Acts as to granting licences to convicts, and the provisions of the Prevention of Crime Acts, with respect to the police supervision of licensees and persons sentenced to police supervision, and with respect to the identification of habitual criminals.

Explosives.

No. 18 of 1894 consolidates and amends the law relating to explosives.

Registration of births and deaths.

No. 1 of 1895 consolidates the law of registration of birth and deaths. Its provisions do not call for special remark.

Marriage.

No. 2 of 1895 is a consolidation of "the laws relating to the registration of marriages other than the marriages of Kandyans or of Mahommedans." Its scope is in fact wider, as it contains the marriage law itself. It applies *primâ facie* to Europeans, Burghers (Eurasians), Low country Sinhalese, and Hindus.

The provisions relating to the ceremony and registration of marriage do not call for special notice. Those relating to the validity of marriage are more interesting. Marriages contracted after the Ordinance comes into operation are not valid unless solemnized by a minister or registrar,* and registered in the manner provided. This abrogates the Roman Dutch Law, which presumes a marriage where man and woman have lived together, unless the contrary is proved.[1]

The ages for valid marriage are sixteen for males, and fourteen for European or Burgher females, and twelve for other females. In the case of males, and of European females, the ages of legal capacity for marriage are thus two years higher than in England.

The prohibited degrees are much less extensive than in England. No marriage is valid—

(1) Where either party is directly descended from the other; or

(2) Where the female is sister of the male, or is any descendant of his brother or sister, or is his step-daughter, or is widow of any ascendant or descendant; or

(3) Where the male is brother of the female, or any descendant of her brother or sister, or is her step-son, or is widower of any ascendant or descendant.

Any marriage or cohabitation between persons within the prohibited degrees is an offence punishable with one year's imprisonment. A suit does not lie to compel marriage, but damages may be obtained for

[1] The provision making registration as well as solemnization absolutely necessary seems too stringent.

breach of promise. A legal marriage has the effect of legitimizing children procreated before marriage, unless procreated in adultery.

For the marriage of a minor, not being a widow or widower, the consent is required of the father, or, in case of incapacity or absence, the mother, or guardian, and where there is no such person capable of consenting, the judge of the district court.

Probably with a view of legitimizing children, provision is made for the celebration of death-bed marriages without the preliminaries required by the Ordinance. The minister and witnesses must sign a certificate that one of the parties is at the point of death, but is of sound mind, memory, and understanding.

2. STRAITS SETTLEMENTS.

[*Contributed by Israel Davis, Esq.*]

Ordinances passed, 15.

Savings banks.

Ordinance No. 1 extends the limits of deposit in the savings bank established at Singapore by virtue of the legislation of 1879 (which replaced an Ordinance of 1876), from 250 dollars in the year and 750 dollars in the aggregate to 500 dollars and 1500 dollars.

Registration of deeds.

Ordinance No. 5 amends the Registration of Deeds Ordinances by providing additional security for the payment of Government duties and the proper demarcation of land. Before it comes into operation in any area a proclamation must have been laid before two successive meetings of the Legislative Council, and have been adopted by resolution of the Council.

Pawnbrokers.

Ordinance No. 17 amends the law relating to pawnbrokers, chiefly with a view to preventing fraudulent pawning. Actions and prosecutions in respect of anything done under the Ordinance must be commenced within six months.

Destructive insects.

Ordinance No. 9 enlarges and defines the list of those who may initiate proceedings under the Ordinance of 1890 for the protection of coco-nut trees from destructive beetles.

Opium.

Ordinance No. 13 amends the Opium Ordinance of the previous session with respect to licences and offences, and by exempting from some of the provisions of the principal Ordinance chandu (preparations of opium) on ships in transit.

Volunteers.

Ordinance No. 15 amends the Volunteer Ordinance of 1888 by sanctioning an additional grant of five dollars for volunteers who satisfy the inspecting officer in special branches of military instruction. It also grants volunteers certain exemptions from jury service.

STRAITS SETTLEMENTS.

Ordinance No. 12 amends the law of evidence by repealing qualifications and consequences imposed in the code of 1893 upon the reception of evidence from spouses against each other in criminal proceedings.

Evidence.

Uniforms.

Ordinance No. 2 re-enacts in substance the Imperial Uniforms Act, 1894 (57 & 58 Vict. c. 45).

Theatres.

Ordinance No. 11 provides for the better regulation of theatres and similar places. Licences must, within municipal limits, be obtained from the police and may be withdrawn. The Ordinance is not to affect the power given to the Municipal Commissioners to make byelaws. The Governor in Council may make rules (to be published in the *Gazette*) as to fees, form of licence and bond, and as to hours.

Telegraphs.

Ordinance No. 7 regulates the telegraph system of the colony. The Governor in Council has the exclusive privilege of establishing and working telegraphs within the colony, with power to grant licences, and with exceptional powers over licensed telegraphs in public emergencies. There are penalties for secreting, altering, intercepting, and otherwise wrongfully dealing with messages, and for knowingly sending false or fabricated messages.

3. LABUAN.

[*Contributed by Sir Courtenay Ilbert.*]

Ordinances passed, 2.

Legal practitioners.

The Legal Practitioner Ordinance (No. 1) enables the Governor to admit duly qualified persons to practise as legal practitioners in the colony.

Criminal procedure.

The Criminal Procedure Adaptation Ordinance (No. 2) applies to the colony of Labuan the British North Borneo Criminal Procedure Adaptation Proclamation.

4. HONGKONG.

[*Contributed by Sir Courtenay Ilbert.*]

Ordinances passed, 29.

Official secrets.

The Defences Sketching Prevention Ordinance, 1895 (No. 1), imposes penalties on any one who, without leave, makes any sketch of any battery, field-work, or fortification within the colony.

Banks.

No. 2 prohibits the issue of banknotes except with the previous sanction of a Secretary of State.

No. 3 shortens the language of Ordinances by enacting provisions similar to those contained in s. 38 of the English Interpretation Act, 1889 (52 & 53 Vict. c. 63), with respect to the savings and other provisions to be implied in repeals. *HONGKONG.* **Language.**

No. 5 enables the Governor in Council to prohibit or regulate the immigration of Chinese into the colony, whenever he is satisfied that there is danger of the introduction of disease into the colony unless measures are taken to prevent the influx of Chinese. **Immigration.**

The Arms Consolidation Ordinance, 1855 (No. 8), regulates the possession of arms. As a general rule no person is to carry arms without a licence, but this rule is qualified by numerous exceptions. Importers of and dealers in arms are to be registered and make returns. Search warrants for arms may be issued, and there is power to search without warrants for arms on board a ship leaving the colony. **Arms.**

The Uniforms Ordinance, 1895 (No. 10), contain provisions similar to those in the English Uniforms Act. **Uniforms.**

The British Possessions Probate Ordinance, 1895 (No. 23), provides, on lines similar to those contained in the Colonial Probates Act, 1892 (55 & 56 Vict. c. 6), for the recognition in the colony of probate or letters of administration granted in another colony. **Probate.**

No. 29 authorizes judicial investigations to be held into the causes of fires. **Fires.**

5. MAURITIUS.

[*Contributed by H. L. Ormsby, Esq.*]

Ordinances passed, 32.[1]

The Civil Status Amendment Ordinance, 1895 (No. 2), imposes a fee of Rs. 25 on change of name. **Civil status.**

The Succession Duties Amendment Ordinance, 1895 (No. 3), substitutes Rs. 1500 for £1000, as the superior limit of successions free from duty by husband, wife, and descendants. **Death duties.**

The Fire Inquiry Ordinance, 1895 (No. 5), legalizes judicial investigations into the causes of fires. **Fire inquiries.**

The proceedings at such investigations are not to be admitted in evidence in cases where a criminal information is subsequently filed.

Forms are scheduled to the Ordinance.

The Common Gambling Houses Ordinance, 1895 (No. 7), contains **Gaming.**

[1] The Ordinances of each year are not classified as general and local and personal.

MAURITIUS.

provisions for suppressing common gambling houses. It imposes a fine not exceeding Rs. 1000 on each person convicted of keeping such houses, and not exceeding Rs. 50 on each person found gambling therein.

It also deals with search warrants in such cases, and with presumption of guilt, and provides for the destruction of means and contrivances for gambling.

In this connection Ordinance No. 14 of 1895 (this ordinance has no short title) may be mentioned.

It exempts the sweepstakes of the Mauritius Turf Club from the Gaming Ordinances.

Cremation.

The Cremation Amendment Ordinance, 1895 (No. 9), prohibits cremation within twenty-four hours of death without a permit from the proper authorities, and enacts that permits shall not be granted where the deceased was not attended by a duly qualified medical practitioner, until after a police inquiry; and otherwise regulates the granting of permits.

Stolen property.

The Search for Stolen Property Amendment Ordinance, 1895 (No. 10), gives a district magistrate power to authorize a constable to search the premises of persons, who have previously been convicted of receiving stolen property or of certain other crimes, for stolen property, without any particular articles of stolen property being specified in the search warrant. It also deals with proceedings against persons found in possession of stolen property discovered by such searches.

Registration of voters.

The Registration of Voters Amendment Ordinance of 1895 (No. 22), provides machinery for the registration of voters by district magistrates, and provides for the making of claims and objections, and enacts that the district magistrate shall examine the register and summon before him any person whom he shall find reason to suspect of not being duly qualified, to show cause why his name should not be expunged.

V. AUSTRALASIA

1. NEW SOUTH WALES.[1]

[*Contributed by W. F. Craies, Esq.*]

Acts passed—
1894–5: Public, 24; Private, 5.
1895: Public, 25.

Quarantine.

The Quarantine Law Amendment Act, 1894 (58 Vict. No. 2), repeals two Acts (5 Vict. No. 12, and 13 Vict. No. 35), and amends two other Acts relating to Quarantine (3 Will. IV. No. 10, and 17 Vict. No. 29). Its effect is to extend the Quarantine Acts to all ports and harbours in the colony, and to transfer to the Board of Health the powers and duties with respect to their enforcement, which outside the port of Sydney had previously been entrusted to the local magistrates. The Board of Health is empowered (s. 6) by its officers to order into quarantine any vessel arriving in any port or harbour in the colony if there be at the time, or have been during the voyage of the vessel, any infectious or contagious disease on board, or if the vessel have touched at any port or place where any such infectious or contagious disease prevailed, or have communicated with any other vessel on board which any such disease existed, whereby in any case danger may reasonably be apprehended to the public health from the immediate admission of the vessel to entry.

Lunacy.

The Lunacy Convention Act of 1894 (58 Vict. No. 5) provides (ss. 1–6) for the making by the Colonial Secretary of agreements by convention or otherwise for the apprehension, care, treatment, maintenance, and burial, and for the payment of the expenses, in an adjacent colony, of a lunatic sent there from New South Wales. Under s. 2 justices may send a lunatic for treatment to a colony with which such agreement exists, with a view to his being arrested and brought within the scope of the Lunacy laws of the adjacent colony. While there detained, at the expense of New South Wales, the lunatic continues

[1] There were two sessions of the Parliament of New South Wales in 1895: (1) that which began in 1894, and ended on July 5, 1895 (58 Vict.); (2) that which began in September, 1895 (59 Vict.), and ended December 20, 1895. The Statutes of the colony are classified as public and private. The former class includes many Statutes which in the United Kingdom would be treated as local and personal. The public Acts of each session are numbered consecutively, but the private Acts are not numbered. Most Acts have short titles.

NEW SOUTH WALES.

for purposes of management and disposition of his property to be subject to the Lunacy laws of New South Wales: and he may (s. 5) at any time at the instance of the Colonial Secretary be brought back to New South Wales. And if discharged from the asylum in the adjacent colony, he is entitled to be paid by New South Wales the costs of his return to that colony. SS. 7, 14 make provision as to boarding out harmless lunatics and all persons incapable of managing their affairs, which, to some extent, correspond with those of ss. 57, 116 of the English Lunacy Act, 1890 (53 & 54 Vict. c. 5).

S. 2 renders the wife of an insane patient liable in respect of her separate estate for his maintenance, clothing, medicine, and care, and provides for the mode of enforcing such liability.[1]

Hospitals.

58 Vict. No. 6 amends the law with respect to the election of trustees and treasurers, and the powers and election of the hospital committees, of hospitals which are maintained partly by private collections and partly by and from public funds. Provisions for the partial incorporation of their managing bodies were made by 11 Vict. No. 59.

Municipal corporations.

Two acts deal with municipalities.

The first, the Municipality Act of 1867 Amendment Act, 1894 (58 & 59 Vict. No. 9), was passed to remove the difficulties created by a decision of the Supreme Court[2] invalidating as *ultra vires* a proclamation of the Governor under the Municipalities Act of 1867, creating and prescribing the boundaries of a municipality. The Act of 1895 (s. 1) validates certain proclamations made before the passing of the Act, and (s. 2) enlarges the power of the Governor as to the boundaries of any new municipality.

The second Act (58 Vict. No. 20) partially removes the disqualification for taking or holding certain municipal offices enforced by ss. 33 & 35 of the Municipalities Act of 1867 (31 Vict. No. 12) upon persons interested directly or indirectly in any contract with the municipality otherwise than as shareholders in a joint stock company.

The new exceptions are much wider than those of the English Local Government Act, 1894 (57 & 58 Vict. c. 73), or the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), and include—

(*a*) Contracts for the supply by the Council of gas, water, or electricity;

(*b*) Contracts for the performance by the Council of any work or service in connection with the paving or asphalting of

[1] In England the liability of the wife to maintain a lunatic husband, if any, depends on her liability to maintain him, if he becomes chargeable to the poor law, under s. 20 of the Married Woman's Property Act, 1882.

[2] Municipality of Gundagai *v.* Norton (15 N.S.W. Rep. Law, 365).

footways, or the kerbing or guttering of roads, or the carrying out of sanitary measures within the municipality;

(*c*) Contracts for the payment of money by any person for leave to use the footways of the municipality during the erection of buildings;

(*d*) Contracts to pay a deposit of money as security for any damage to footways within the municipality; and

(*e*) Contracts relating to any lease *already* granted of any land belonging to or under the control of the Council.

Standard time.

The Standard Time Act of 1894 (No. 11) adopts as the standard of time for the colony the mean time of the meridian of longitude 150° E. of Greenwich.[1] It further enacts that, "Whenever any expression of time occurs in any Act, order in Council, rule, regulation, by-law, or deed, or in any instruments whatsoever, and whenever the doing or not doing anything at a certain time of day or night, or during a certain part of the day or night, has an effect in law, such time shall, unless it is otherwise specifically stated, be held to be standard time throughout New South Wales, as declared by this Act" (s. 4).

Two Acts deal with Crown lands:

Crown lands.

(1) The Reserves Declaratory Act, 1895 (58 Vict. No. 16), amends the law as to the reservation of Crown lands or their withdrawal from lease or occupation licence.

(2) The Crown Lands Act of 1895 (58 Vict. No. 18) (the most considerable Act of the Session 58 Vict.) contains many modifications of the very numerous and complex Land Acts of the colony with reference to dealings with Crown land.

Part I. relates to pastoral holdings. Its general scope is to empower the resumption by the Crown for purposes of settlement (but subject to compensation for certain specified improvements) of lands let on pastoral lease. S. 7 creates a statutory term of twenty-eight years for pastoral and homestead leases in the western division of the colony, and gives a tenant-right in improvements on lands held under such leases. S. 9 directs a new appraisement and reduction of rents or licences for the same division where the lessee or licensee considers that his rent or licence fee is excessive by reason of devastation of rabbits, depreciation of value, deterioration of the capability of the land, or other similar cases.

Part II. gives power as to the classification and survey of farm lands.

Part III. deals with homestead grants. The scheme of this part

[1] This Act corresponds to the Statutes (Definition of Time) Act, 1880 (43 & 44 Vict. c. 9).

NEW SOUTH WALES.

is to grant homestead selections not exceeding 1280 acres in extent, subject, with certain exceptions, to conditions as to residence (s. 17), and payment of a rent-charge of 2½ per cent. on the capital value of the selections, and to forfeiture on default in compliance with these conditions. The owner of a homestead selection, who has established his home on the selection, may by registration (s. 23) protect the holding:

(*a*) From sale under a writ of execution;

(*b*) From vesting in his trustee in bankruptcy; and

(*c*) From being taken in any way under process or constraint of law. But a holding so protected cannot be alienated or encumbered by the owner.[1]

Part IV. deals with conditional purchases and leases of Crown land, imposing conditions as to residence and fencing or other improvements. Of the general provisions in Part V. special attention need be drawn only as to ss. 40, 41, limiting the privilege of selection of Crown lands, and debarring aliens from applying except on an undertaking to be naturalized, or from holding unless they become so.

Ecclesiastical affairs. The private Acts call for no remark, except that, although there is no established Church in the colony, legislation was found necessary to validate two Ordinances of the Anglican Synod of the Diocese of Goulburn as to the cathedral of Goulburn, and to provide for the management of the temporalities of the Presbyterian Church in the colony.

Finance. The Audit Act Amendment Act, 1895 (59 Vict. No. 10),[2] directs that every appropriation out of the consolidated revenue of the colony for the service of a financial year shall lapse and cease at the end of the year, and the unexpended balance shall be surrendered, with a special provision for the case of public works. Under s. 3 the treasurer has contingent authority to pay money for the public service pending the passing of an Appropriation Act.

Commons. The Commons Act Amendment Act, 1895 (59 Vict. No. 12), limits the right of carriers, teamsters, travellers, and drovers to depasture their animals on commons (s. 1), and gives powers for declaring the number and description of stock to be allowed on a common.

Life assurance policies. The Lost Policies Act of 1895 (59 Vict. No. 13) is intended to remedy inconvenience caused by the loss or destruction of life assurance policies issued in the colony, or recorded in the books of a life assurance office in the colony. It empowers the issue of a "special policy" in proof of loss or destruction of the original.

[1] Compare the Acts of New Zealand, Queensland, and South Australia, *infra*.

[2] The preamble contains these words: "Whereas in past years much confusion has arisen in respect of the true condition of the public accounts, and it is desirable that the public income and expenditure should be put on a cash basis."

NEW SOUTH WALES.

The Land and Income Tax Assessment Act of 1895 (59 Vict. No. 15) established, for the first time, direct taxation by means of a tax on land and income. The land tax is levied on the unimproved value of the land, after deducting the sum of £240. The tax is at present 1*d.* in the £ (by 59 Vict. No. 16). From the tax on mortgaged land is deducted the income tax payable on the interest accruing under the mortgage.

Land tax and income tax.

Income tax is leviable on incomes exceeding £200 a year, at present at the rate of 6*d.* in the £ (59 Vict. No. 17). All income taxpayers, except companies, are entitled to deduct £200 in assessment for taxation. The Act provides elaborately for assessment and deduction in computing the amount of income.

Australasian federation.

The Australasian Federation Enabling Act, 1895 (59 Vict. No. 24), expresses the adhesion of New South Wales to the scheme of a convention to frame a Federal Constitution for Australasia, and is, in form, substantially the same as that of South Australia, mentioned below.

Public service.

The Public Service Act of 1895 (59 Vict. No. 25) alters, with a view to improvement, the organization and control of the public service. It dissolves the Civil Service Board appointed under the Civil Service Act of 1884, and establishes a Public Service Board of three members, who are to inspect the various departments, grade the officers, classify their work, and deal with cases where an officer's salary is higher than is merited by the work he is doing, and generally to regulate the service. Part III. deals with the examination of candidates for appointment; Part IV. with internal administration, including promotions and dismissals; and Part V. with pensions, gratuities, etc.

The judges of the Supreme Court and certain specified officials are exempted from the control of the Board.

2. TASMANIA.[1]

[*Contributed by W. F. Craies, Esq.*]

Acts passed, 59—General, 57; Local and Private, 2.

Australasian federation.

The Australasian Federation Act, 1895 (No. 27), expresses the adhesion of Tasmania to the scheme of a convention to frame a Federal Constitution for Australia.

[1] The session 59 Vict. ended on October 24, 1895. The Acts of the session are divided into two classes, general and local, and the Acts of each class are numbered separately. Some of the Acts classified as general would in the United Kingdom have been treated as local.

TASMANIA.

The Act is substantially the same as that of South Australia (*ante*, p. 43).

Payment of ministers and officials.

59 Vict. No. 41 cuts the payment of Members of Parliament down to £50 for 1896, and reduces the salaries of the colonial ministers and law officers, the Agent-General, and Parliamentary officials.

Supreme Court.

The Supreme Court Act, 1895 (No. 56), (reserved for the Queen's pleasure, but since assented to by Order in Council of December 12, 1895), authorizes suspension of the appointment to the next vacancy on the Supreme Court Bench until both Houses of the Legislature authorize its being filled up.

Standard time.

The Standard Time Act, 1895 (No. 4), adopts the mean time of the meridian of 150° longitude east of Greenwich as standard time for the colony. The Act is almost identical in terms with that of New South Wales (*ante*, p. 29).

Registration of births and deaths.

The Registration of Births and Deaths Act, 1895 (No. 9), consolidates and amends the colonial law, which closely follows the English Registration Acts. A birth must, as a general rule, be registered within sixty days (s. 16), and in outlying districts the statutory informant, if at an inconvenient distance from a registrar, may resort to a magistrate (s. 18). Eight days are given in which to register a death (s. 23). By s. 40 certified copies under seal, of registers or entries, made or given by the Registrar-General or any registrar, and purporting to be signed by such officer, are to be received in any court of justice in the colony, as *primâ facie* evidence of the fact of the birth or death (to which the certificate relates).

Marriage.

The Marriage Act, 1895 (No. 23), repeals seven colonial Acts, and consolidates and amends the laws relating to marriage, so far as they relate to the mode of celebration and registration of marriages; but does not deal with the degrees of consanguinity and affinity. Marriages must be celebrated before a registrar of marriages or a registered minister of religion. Registration of ministers is effected in the case of certain scheduled religious bodies (the chief denominations) by the transmission to the Registrar-General yearly of a correct list of their officiating members (ss. 8, 9, and 10), which remains in force for a year from its publication in the *Gazette* (s. 12), and the presence of the minister's name in the list is conclusive as to his right to celebrate marriages during the period.

Marriage by banns is not used in the colony; but a licence from an officiating minister or registrar or a certificate from a registrar is necessary before celebration (ss. 16–21).

Caveats against the grants of licences or certificates may be entered, and if entered can be dealt with by the Supreme Court (ss. 30, 31).

A person whose consent is required to the marriage of a minor can forbid the marriage by making and subscribing an entry "Forbidden" in the marriage notice-book of the registrar (s. 28). *TASMANIA.*

The Income Tax Act, 1895 (No. 20), makes numerous amendments in the Income Tax Act, 1894 (58 Vict. No. 16), which established income tax in the colony. **Income tax.**

Incomes not exceeding £100 derived from property, and not exceeding £150 derived from personal exertion, are tax free. A deduction of £120 is allowed from incomes from personal exertion between £150 and £400, and an exemption of £80 from incomes derived from property between £100 and £400 (s. 5). Provision is also made in respect of small incomes arising jointly from both sources.

In ascertaining the taxable amount of income, the income is (s. 4) to include—

(*a*) The annual value to the occupiers of a house or residence occupied rent free in connection with any office or service, and in respect whereof colonial land tax is not paid; and

(*b*) The annual value of quarters, board, or residence, and all amounts or allowances received by way of extra salary, bonus, or emolument, or otherwise, in respect of any employment, office, or service.

Ss. 6, 7 state the general deductions, which are—

(1) Taxes, outgoings, and expenses actually incurred in the production of income;

(2) Interest on borrowed money; and

(3) Money spent in supplying, altering, or repairing utensils or articles employed for purposes of trade.

Appreciation in the value of property, or profit on the sale or transfer of property otherwise than in the course of trade, is not to be regarded in assessing income (s. 8).

When a trader keeps no sufficient books his income is estimated—

(1) At 2*s.* in the £ on the capital value of all personalty used for the production of income;

(2) At 40 per cent. on the capital value of his residence; and

(3) At the annual value of the premises on which he carries on the trade in respect of which the income is being assessed (s. 9).

Loss in one business may be set off against profits on another, where the taxpayer carries on two or more businesses alone or in partnership; and loss in trade may be deducted from income from property (s. 10).

The Colonial Treasurer and companies are to pay and deduct the tax on Colonial stock or company debentures; and the interest on

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stock or debentures so paid, less tax, is not to be included in the taxpayer's income (ss. 12, 13, 14).

Dividends may not be distributed till the tax is paid (s. 16).

Excise. The Cigar and Cigarette Duty Act, 1895 (No. 3), imposes an excise duty of 2*s.* per lb. on all cigars and cigarettes manufactured in the colony, and an annual licence duty of £25 on every factory of cigars or cigarettes.

Land tax. The Land Tax Act, 1895 (No. 21), allows a deduction from the valuation for land tax by a mortgagor in respect of the amount due on mortgage, if the claim is made within thirty days of demand of the tax.

Valuation of property. The Property Valuation Act, No. 4 (No. 22), gives an appeal against the assessment of any property to any person who appears in the valuation list as owner or occupier of the property (s. 3). The rateable value, or annual value of land used for mining purposes, is to be assessed on the land and buildings, and without reference to the expectations of the mineral produce of the mine (s. 4).

Cruelty to children. The Prevention of Cruelty to and the Protection of Children Act, 1895 (No. 10), is an adaptation to the colony of the Imperial Act of 1894 (57 & 58 Vict. c. 41). Children up to fifteen are within the scope of the Act, which repeats in substance ss. 1, 2, 4, 6, 10, 12, 15, 17, 24, of the Imperial Act, but omits its other elaborate provisions.

Post-office. The Post-office Amendment Act, 1895 (No. 18), fixes (s. 1) the interest on deposits in savings banks at two and a half per cent.; and gives (s. 2) power to the post-office to deposit savings in banks until a Government investment is available. S. 3 empowers the department to credit to depositors as money, sums deposited in stamps, and s. 4 permits payment, out of money received on the sale of stamps, of money payable on telegrams transmitted or guaranteed, payment for which was made in postage stamps.

Companies. (1) The Companies Act, 1895 (No. 19), consolidates and amends a series of colonial statutes as to companies, beginning with part of the Act of 1869 (33 Vict. No. 22), and including the colonial versions of the Companies Memorandum of Association Act, 1890 (53 & 54 Vict. c. 62), the Directors Liability Act, 1890 (53 & 54 Vict. c. 64) and the Companies Winding-up Act, 1890 (53 & 54 Vict. c. 63).

S. 7 permits registration for purposes, including winding-up, of companies existing at the date (1869) when the Colonial Principal Act was passed. SS. 20–25 deal with the winding-up of unregistered companies, and correspond closely with ss. 199–204 of the Imperial Act of 1862 (25 & 26 Vict. c. 89).

(2) The Foreign Companies Act (No. 17), reserved for the Royal

pleasure which has not yet been signified, is framed with a view to imposing conditions on the carrying on of business in Tasmania by companies, corporate or incorporate, which were not incorporated in, or have not their head offices in the colony (s. 3).

Such companies must appoint under their common seal an attorney to sue and to be sued for them in the colony. The power of attorney, and of the documents constituting the company, must be verified by declaration filed in the colony.

There must be a registered office in Tasmania (ss. 9, 10), and notice must be given of intention to cease carrying on business in the colony (s. 16). Foreign trustees and executors companies must deposit £5000 with the Colonial Treasurer (s. 19). SS. 20, 21 deal with the registration of assets in Tasmania, on which Tasmanian liabilities are to be a first charge, and require the keeping of separate accounts of all such assets. S. 27 deals with the variation and discharge of contracts made with foreign companies, and s. 31 imposes a stamp duty of £50 on the registration of a foreign company in Tasmania.

Employers' liability.

The Employers' Liability Act, 1895 (No. 25)—a temporary Act—regulates the liability of employers to compensate workmen for personal injuries suffered in the cause of their service. It is in substance a transcript of the Imperial Act of 1880 (43 & 44 Vict. c. 42).

Merchant shipping.

The Marine Boards Amendment Act, 1895 (No. 27), amends the Colonial Marine Boards Act, 1889 (53 Vict. No. 34).

It deals (ss. 5–9) with the constitution, election, and mode of election of marine boards and the master warden.

SS. 11–15 deal with pilotage; s. 12 requiring outward-bound ships to take pilots, and s. 15 exempting whale-ships and sealers from certain port dues, except for pilotage.

S. 17 requires survey of the hull and machinery of all steamers trading to or from Tasmania.

SS. 20–22 deal with inquiries into casualties and collisions, and give power to cancel or suspend the certificates of masters, etc. They require transmission to the "Lords of the Committee of the Privy Council for trade in England" of the proceedings of a court of inquiry into any casualty or collision, to or between vessels, having officers whose certificates would be cancelled or suspended under the Wrecks Inquiry Act, 1874 (38 Vict. No. 22).

Building societies.

The Building Societies Act, 1895 (No. 29) amends the Colonial Building Societies Act of 1876 (40 Vict. Nos. 5, 23), and 1887 (51 Vict. No. 10) as to societies suspending business.

A society which has suspended business may dispose of its assets as and when the directors think fit (s. 1). Creditors in such a case may

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buy or take a transfer of any part of the assets, and pay by credit or arrangement (s. 2). SS. 3–6 deal with the effect of the sale or transfer of securities, and give the transferee the rights of the original holder. SS. 7–9 deal with the mode and proof of suspension of business, and empower the members, if they prefer, to have the society wound up.

Local statistics.

The Statistical Returns Amendment Act, 1895 (No. 30), amends the Statistical Returns Act, 1877 (41 Vict. No. 15), by requiring municipal councils to furnish to the Government statistician any statistics relating to the municipality, and in such form or manner as the Governor in Council directs. Penalties are provided for failure to supply or for incorrectness in the statistics sent.

Legal profession.

The Legal Practitioners Act, 1895 (No. 28), is very similar in its scope to the English Solicitors Act, 1894 (57 & 58 Vict. c. 9). It amends the colonial Act of 1885 (52 Vict. No. 35) by empowering the Supreme Court to admit as a legal practitioner any person of twenty-one who has taken the degree of Bachelor of Laws in the University of Tasmania, or any university recognized thereby, and has served three years under articles with a qualified practitioner, and has passed the qualifying examinations.

Trustee.

The Trustee Act, 1895 (No. 24), amends the law as to trustees. Trustees, executors, and administrators are entitled as of right to be entered on the register of any banking, mercantile, or trading corporation in their fiduciary capacity in respect of shares of a deceased settlor. The registration does not, *per se*, impose on the trustee personally any liability, which rests on the estate of the deceased (ss. 4–6).

Trustees, etc., authorized by the trust instrument, or will, to purchase shares in such corporations, may be registered in their fiduciary capacity in respect of the shares at the option of the corporation, and the registration imposes no personal liability (ss. 5, 6).

Where the trust instrument does not provide for the remuneration of a trustee the Supreme Court may determine its amount in a summary manner (s. 8).

Beneficiaries under wills are, on written application to the trustees, executors, or administrators, entitled to an account within twenty-eight days, if no account has been rendered within the preceding year (ss. 13, 14).

Ss. 9, 10, 11, 13 create machinery (by petition) for the removal of trustees (including executors and administrators) at the instance of a beneficiary, and for making them account after removal.

S. 12 makes Tasmanian inscribed stock a trust security in the colony.

Defamation.

The Defamation Act, 1895 (No. 11), declares and amends in a concise

and simple code the colonial common and statute law, civil and criminal, on the subject of defamation, which differs only in a few details from that of England. Slander of title, blasphemous and seditious and obscene libel are excluded (s. 2) from the scope of the Act. *TASMANIA.*

Any imputation concerning any person or any member of his family, whether such member be living or dead, by which the reputation of that person is likely to be injured, or by which he is likely to be injured in his profession or trade, or by which other persons are likely to be induced to shun, or avoid, or ridicule, or despise him, is called defamatory, and the matter of the imputation is called defamatory matter (s. 4). The publication of defamatory matter is declared to be *primâ facie* unlawful (s. 8), unless it is protected, or justified, or excused by law. S. 16 departs from the English law by making both truth and public benefit necessary for the justification of defamation either in civil or in criminal proceedings; and criminal liability for defamation is extended, by the definition above given to slander as well as libel (ss. 25, 26). The term "privilege," or "privileged occasion," is not used, but instead are given definitions of matters "absolutely protected" (ss. 10–12), and of "publications excused by qualified protection" (s. 17). "Public interest" (s. 13) and "fair comment" (ss. 14, 15) are defined in terms substantially reproducing the law of England.

Two Acts deal with Crown lands. The former, the Crown Lands Amendment Act, 1895 (No. 31), amends the Crown Lands Act, 1890 (54 Vict. No. 8), by providing for the sale on credit, and subject to improvement, of second-class lands, and for the sale of certain lands in mining towns (s. 12); and mitigates the terms on which selectors of agricultural land may complete wholly or partially their purchase (s. 13). **Crown lands.**

The widower, or widow, or child of an intestate purchaser of Crown land, in case of poverty, is allowed to hold the land and complete the purchase on the same terms as the intestate, without taking out administration (s. 11).

The Residence Areas Amendment Act, 1895 (No. 36), enlarges the time for the completion of the purchase of "residence areas" under the Residence Areas Act, 1891 (55 Vict. No. 30).

(1) The Mining Act, 1895 (No. 35), amends the Mining Act, 1893 (57 Vict. No. 24). It prescribes the precautions to be used in lowering timber down shafts (s. 7). The remaining provisions relate to miners' residence licences, and the rights and liabilities of mining lessees. **Mines.**

(2) The Mining Companies Act, 1895 (No. 37), amends the Mining Companies Act, 1884 (48 Vict. No. 15), by imposing on the trustees of "no liability" companies a joint and several liability for wages or salary

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of employees for the two weeks succeeding the last payment to such employees.

Game, wild birds, etc.

The Game Protection Act, 1895 (No. 26), consolidates and amends the game laws of the colony. SS. 5–7 protect imported game, *i.e.* pheasants, partridges, etc., and their eggs. SS. 8–15 create a close season for native game birds; and ss. 16, 17 are framed for the protection of the short-tailed petrel, or mutton-bird. SS. 18–28 regulate the hunting of deer, kangaroos, and opossums, except the ring-tailed variety. A close time is created, and a preliminary close time of two years is given as to opossums and forester kangaroos. Under s. 30 the platypus is absolutely protected for two years. SS. 31, 32 forbid, under penalty of £50, the setting at large of any weasel or ferret, or the importation of wolves, foxes, wild dogs, or dingoes.

Rabbits.

The Rabbits Destruction Amendment Act, 1895 (No. 16), amends the law as to the destruction of rabbits, embodied in Acts of 1889 (53 Vict. No. 42) and 1893 (57 Vict. No. 22), but it merely prescribes the fund to which penalties under the Acts of 1889 and 1893 are to be carried.

3. VICTORIA.[1]

[*Contributed by H. E. Gurner, Esq.*]

Intoxicating liquors.

Of the Acts passed in the third session of the fifteenth Parliament of Victoria, nine appear to have more than a purely local interest.

Act No. 1364[2] amends the Licensing Act of 1890 by allowing either the owner or the mortgagee of licensed premises to apply for a licence to be granted either in his own name or in that of his nominee, if in the opinion of the licensing court they or either of them are fit persons to hold such licence.

Standard time.

Act No. 1370 fixes the standard of time in Victoria by declaring the mean time of the 150th meridian of longitude east of Greenwich to be such standard time throughout Victoria.

Payment of members.

Act No. 1373 reduces the payment of members of the Legislative Assembly from £270 a year to £240 a year. The rate had been fixed at £300 a year in 1890, but was reduced to £270 in 1893.

Official salaries.

The Ministers' Salaries Act, 1895, provided for reducing the salaries of ministers of the Crown from £14,000 to £10,400. The Governor's

[1] The session under review (58 Vict.) ended on January 29, 1895. The session 59 Vict., which began in July, 1895, did not end till March, 1896, and is excluded.

[2] The Acts of Victoria are numbered consecutively, without reference to the session or the year in which they are passed.

Salaries Reduction Act, 1895, provided for reducing the Governor's salary from £10,000 to £7000. But these two Acts, although they have passed both houses of the Legislature, have not yet received the Royal assent.

Income tax.

Act No. 1374 imposes an income tax. As a general rule, income up to £200 is exempt, and the excess only represents the taxable amount. The rate for 1895 on the taxable amount was—

(*a*) On income derived from personal exertion—

(i.) 4*d.* in the £ up to £1200.

(ii.) 6*d.* in the £ where the income is between £1200 and £2200.

(iii.) 8*d.* in the £ where the income is over £2200.

(*b*) On income derived from property within the colony—

(i.) 8*d.* in the £ up to £1200.

(ii.) 1*s.* in the £ where the income is between £1200 and £2200.

(iii.) 1*s.* 4*d.* in the £ where the income is over £2200.

The taxes are subject to numerous exemptions and deductions. There are exemptions for the ministers and various other Government officials; for the university and local authorities in respect of their official income; for the Governor in respect of the emoluments of his office; for friendly and religious societies and associations; for public bodies not engaged in trade for the purposes of gain; for building societies, trade unions, mutual insurance companies, and mining companies. Also in respect of dividends on shares in mining companies, except so far as they are in excess of the calls paid by the shareholders during the year, and in respect of interest payable to persons not resident in the colony on stock, debentures, or bonds of the Colonial Government, or of any public or municipal trust, body, or corporation in the colony.

Deductions may be made for losses and outgoings incurred in the colony by any taxpayer in production of income, and for taxes payable by him under any Victorian Act except the Income Tax Act. There are also deductions for life insurance, and for calls payable on reconstructed companies. Losses in one trade may be set off against profit in another, and losses in trade may be set off against income derived from property.

But there is a general provision in Part III. of the Act that no person who is absent from Victoria for six months in the year is to be entitled to any deduction.

Elementary education.

Act No. 1382 provides for the classification of teachers in the State schools, and for regulating their salaries.

Act No. 1388 (which amends the Landlord and Tenant Act of

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Landlord and tenant.

1890) exempts the following goods and chattels of the tenant from distress, namely, the tools and instruments of his trade, wearing apparel, tables, chairs, cooking utensils, bedsteads and bedding, not exceeding £20 in value of the whole, provided that the tenant, if so required by the landlord, shall within seven days deliver up possession of the tenement occupied by the tenant, and give up and sign a surrender of any lease or agreement, provided there shall have been no devastation of the tenement during the occupancy.

4. SOUTH AUSTRALIA.

[*Contributed by W. F. Craies, Esq.*]

Acts passed—Public, 32; Private, 1.[1]

Inscribed stock.

The Inscription of Stock Amendment Act, 1895 (No. 619), amends the Inscribed Stock Act, 1892 (Act No. 268), and the Public Purposes Loan Act, 1892 (Act No. 549).

It provides for the inscription of all South Australian stock sold, or to be sold, at the office of the Agent-General in London, or at the Treasury in Adelaide, and it extends to stock inscribed in Adelaide the provisions of ss. 4–7, 9–18 of the Colonial Stock Act, 1877 (41 & 42 Vict. c. 59), which are scheduled to the Colonial Act.

SS. 8, 11 deal with the punishment of offences relative to stock certificates, namely, forging stock certificates or coupons without lawful authority, or making false entries on a stock register.

Aliens.

The Naturalization Act, 1895 (No. 616), amends the Aliens Act, 1864 (27 & 28 Vict. No. 5), by abolishing all fees on proceedings for naturalization, and permitting aliens to make their declarations and oaths before a justice of the peace instead of before the Registrar-General.

Wills.

59 Vict. No. 620 adapts to South Australia the Imperial Wills Act of 1861 (24 & 25 Vict. c. 114), so as to admit to probate in South Australia wills made outside the colony, if made according to the law of the place where they are made. It applies only in the case of persons dying after October 22, 1895.

Museums and art galleries.

The Public Library, Museum, and Art Gallery Act, 1895 (No. 621), amends the law as to the management of institutes for literature, science, or art.

[1] The Acts of South Australia are numbered consecutively without reference to the session in which they were passed.

59 Vict. No. 623, which is reserved for the Queen's pleasure, proposes to repeal the Governor's Salary Act, 1866 (30 Vict. No. 28), whereby the salary of the Governor of the Colony was fixed at £5000 a year. *SOUTH AUSTRALIA.* **Official salaries.**

The Taxation Acts Amendment Act, 1895 (No. 624), reduces the exemption from income tax to incomes of £125 (the previous limit having been £200), and abolishes exemption where the taxable amount of the income from all sources exceeds £300. **Income tax.**

The Impounding Act Amendment Act, 1895 (No. 625), authorizes the destruction of impounded cattle which a justice decides, after inspection, to be dying or so diseased as not to be likely to recover. The justice's order is to be in writing, and is to be delivered to the pound-keeper, and the proceeds of the sale of the carcases are to be applied as declared by ss. 34, 35 of the Impounding Act of 1858 (22 Vict. c. 8), *i.e.* in paying (1) the charges of any auctioneer employed; (2) the pound-keeper's charges; (3) anything due to the person at whose instance the cattle were impounded; and (4) the surplus to the owner of the cattle, or, failing proof of ownership, to the Colonial Treasurer, or in municipal districts to the municipal corporation. **Pound.**

(1) The Village Settlements and Reduction of Rents Amendment Act, 1895 (No. 627), extends to miscellaneous leases for grazing and cultivation granted (not by a Land Board) after December, 1888, the provisions of the Crown Lands Act, 1894 (No. 608), for the reduction of the rents of certain Crown lands. The procedure is as follows:— **Crown lands.**

A written application is made to the Commissioner of Lands. If he certifies in writing that a revision of the rent of land is necessary to secure its profitable occupation, the Land Board of the district re-value the land and report the reduction, if any, which should be made, and the Commissioner on the report may make a reduction not exceeding the reported amount. This is to be endorsed on the lease, and is to apply for the rest of its term.

(2) The Pastoral Act Amendment Act, 1895 (No. 642), amends the Pastoral Act of 1893 (No. 585), and contains (ss. 23–25) special provisions with reference to the reduction of the rent under pastoral leases, and the relief of pastoral tenants from forfeitures. Pastoral lands in the colony are to mean (s. 4 of the Act of 1893) "all Crown lands not included in any hundred, and also all lands vested in the Crown, and subject to any pastoral lease at the passing of the Act of 1893."

(1) The Mining on Private Property Amendment Act, 1895 (No. 626), amends the Mining on Private Property Act, 1888 (51 & 52 Vict. No. 448), by extending the definition of "metal," there confined to gold, so as to "include and mean all other metals and minerals," and **Mines.**

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the definition of "owner," so as to include the owner of metals in land as well as the owner of the fee simple of the land.

S. 6 excludes from the Act of 1888 lands within two hundred yards of a well, artificial reservoir, dam, or building other than a dwelling-house, or of any dwelling-house or manufactory.

S. 9 requires registration with the warden of goldfields of miners' alluvial claims when pegged out.

(2) The Northern Territory Gold Mining Amendment Act, 1895 (No. 628), deals with gold mining in the northern territory of the colony.

(3) The Mining Act Amendment Act (No. 618), amends the Mining Act of 1893 (56 and 57 Vict. No. 587), by giving (s. 2) a preferential right to a salt lease (under Part III. Division VII. of the Act of 1893) to holders of lands on which salt lakes are situate. The right must be claimed within six months of notice from the inspector of lands, requiring the holder to exercise the right. The lease may be for a period not exceeding forty-two years. The holders who may exercise the right are holders of lands under agreement to purchase upon credit, or under a selector's right to purchase, or under perpetual or miscellaneous lease from the Crown. Before this Act salt leases were granted only to holders of miner's rights.

Village Settlements.

The Village Settlements, etc., Amendment Act, 1895 (No. 627), takes steps for further development of an experiment in rural Communism begun in 1893. Part VII. of the Crown Land Amendment Act, 1893 (56 & 57 Vict. No. 584), had provided (ss. 42–46) for the establishment of associations of twenty or more persons over eighteen for the purpose of village settlement. Upon the registration of the memorandum of association, and consequent incorporation of the subscribers, the Governor by proclamation might set apart (ss. 47–50) Crown lands of sufficient area to provide not more than 160 acres for each villager, and might grant a lease of the area to the association (s. 57). The conditions of the lease (s. 57), which under s. 4 of the Act of 1895 must be issued within two months of the proclamation, require the residence of at least half the villagers and the utilization of the land, the expenditure during the first ten years of at least *2s.* per acre on improvement of the land, viz. buildings, fencing, dams, tanks, wells or reservoirs, clearing, drainage or irrigation. The labour of the villagers is to be taken into account in computing the amount expended. The land may not be sub-let or disposed of to any person not a villager; nor can the lease be assigned, mortgaged, or in any way encumbered. After the proclamation has been made (Act of 1895, s. 3), advances may be made not exceeding £50 per villager, nor half the cost, to the association of the

improvements (Act of 1893, s. 60), repayable by ten equal instalments, with interest at 5 per cent. on the unpaid balance; the first instalment payable five years after the advance (Act of 1895, s. 10). The maximum which may be advanced is increased by the Act of 1895 to £100 per villager, but the total advances under the Act are restricted to £50,000, and the Governor on report of a competent expert may by proclamation terminate the right of a village to any further advance, if there is no reasonable ground for believing that the village will eventually be solvent.

The settlement is to be managed by a board of not less than three trustees, to be elected by the villagers; who are to allot among the villagers for "possession and use" the leased area, in portions not exceeding 160 acres for any one villager. The villagers have during the currency of the lease no separate interest or property in any land within the village; but are jointly and severally liable for the repayment of the advances, the liability not to exceed the amount to be ascertained by dividing the total liability by the number of villagers at the time when it was incurred.

The rules of the association (Act of 1893, ss. 72–86), to be approved by the Commissioner of Lands, are to deal with the management of the association, including—

(1) The apportionment of the settlement among the villagers.

(2) The establishment, management, and control of trades and industries within the village.

(3) The retention and expulsion of villagers, subject (by Act No. 627, s. 8) to an appeal from the trustees to the villagers, or, if they confirm the expulsion, to the Commissioner of Lands.

(4) The admission of additional members, and of new members in the place of deceased, expelled, or retiring villagers.

Under the Act of 1895 (ss. 6 & 7), so long as any advances are unpaid, the Commissioner of Lands may expel villagers who have become liable under the village rules to expulsion, may control and direct the expenditure of the invested moneys, may call on a village member to retire if he thinks the welfare of the village requires it, and may require the number of villagers to be increased to a number not more than five hundred nor less than the twenty who signed the rules first registered, and in default may cancel the association lease; and he may also (Act of 1893, s. 78) require the payment to a common fund of all or any part of the earnings of the villagers, whether earned within the village or elsewhere.

There are also provisions for dissolving a village association, and

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granting the villagers separate leases framed on the lines of the original common lease.

Sale of goods.

The Sale of Goods Act, 1895 (No. 630), is in substance a transcript of the Imperial Act of 1893 (56 & 57 Vict. 73), with the omission of s. 40, and slight modifications of ss. 26, 60, 61, 62.

Australasian federation.

The Australasian Federation (Enabling) Act, 1895 (No. 632), is intended to provide—

(1) For framing a Federal Constitution for Australasia by a Convention consisting of ten representatives of each colony directly chosen by the electors of the House of Assembly for each colony;

(2) For submitting the Constitution so framed to the electors of the House of the Assembly for each colony for acceptance or rejection by direct vote; and

(3) For transmitting the Constitution for legislative enactment by the Imperial Parliament.

The three parts contain elaborate provisions under each head, and if the convention, when settled, is adopted by the popular vote of two colonies besides South Australia, the South Australian Parliament may adopt addresses praying that it may be passed into law by the Imperial Parliament.[1]

State advances.

The State Advances Act, 1895 (No. 633), provides—

(1) For the creation of a State Bank, to be managed by five trustees, to be appointed and removable by the Governor (three to be a quorum), and paid two guineas for each attendance, but not over £200 per annum;

(2) For the raising by mortgage bonds (guaranteed by the Colonial Government) of a State Advances Fund, to be placed at the disposal of the bank for State advances; and

(3) For making advances out of the State Advances Fund at reasonable rates, on convenient terms, and upon proper securities.

(*a*) To farmers and other producers, and in aid of industries, upon the security of lands held in fee simple or under Crown lease. The advance to any person, firm, or company, must not exceed £5000 (s. 47).

[1] Acts similar in terms have been framed by New South Wales (59 Vict. No. 14), Victoria (59 Vict. No. 1443), and Tasmania (59 Vict. No. 27). In Queensland the introduction of a like bill was deferred until after the general elections, completed in April, 1896. The bill now (July 1, 1896) before the Queensland Parliament differs from the Acts of other colonies as to the method of selecting delegates for the convention.

(*b*) To local authorities upon the security of their rates, for the purpose of purchasing, constructing, or otherwise acquiring bridges, roads, tramways, wharves, jetties, baths, gas-works, electric lighting works, or permanent improvements, or providing for the redemption or conversion of existing ways. *SOUTH AUSTRALIA.*

The Act contains elaborate provisions as to the security, form of mortgage, mode of repayment, and as to accounts and audit. The mortgage bonds are made a trust security (s. 64), unless expressly prohibited by the instrument creating the trust.

Vermin. The Vermin Act, 1895 (No. 634), amends the Vermin District Act (58 Vict. No. 597). It deals with the extirpation of wild dogs, foxes, and rabbits, the formation of Vermin Boards, and the levying of vermin rates, and imposes penalties on corporations and districts which are negligent in suppressing rabbits.

Savings banks. The Savings Bank Act, 1895 (No. 638), which amends ss. 22–27 of the Savings Bank Act, 1875 (38 & 39 Vict. No. 22), permits the payment of interest on deposits of friendly societies in the Government Savings Bank exceeding £250, at a rate to be determined by the trustees, but not exceeding the average rate at which the surplus funds of the banks are invested.

Homesteads. The Homestead Act, 1895 (No. 640), provides for the registration by settlers of homesteads upon which they are residing or have resided for at least a year before application, and consisting of land of which they are owners for an unincumbered estate in fee simple or under perpetual lease from the Crown, and not exceeding in value, with improvements, the sum of £1000.

Creditors may stay registration by caveat; and registration is no protection against debts due from the settler at the date of registration.

Subject to these provisions registration has the effect of a settlement of the homestead (s. 30)—

(1) For the benefit, use, or occupation of the settler and his or her wife or husband and children until what is termed the period for distribution, *i.e.* the death of the settler, or the time when all his or her children have attained twenty-one, or died under that age, whichever shall last happen; and

(2) For distribution at the period of distribution amongst the family of the settler then living, subject to a power of registration, the mode of distribution by the settler's will (s. 36), and including persons who would otherwise have

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participated, but not including persons who would not otherwise have participated.

No alienation or attempted alienation by the settler or his or her family has any effect, except where the settler, with the consent of his or her wife or husband, lets the land for not over three years on the terms allowed by ss. 34–36.

The estate or interest of the settler and family is personal, absolute, indefeasible and unaffected to the amount of £1000, and notwithstanding any bankruptcy, insolvency, assignment, judgment, order, execution, sale, transfer, matter or thing, which but for the Act would or could directly or indirectly have affected any estate or interest in the land. At the period for distribution the registration ceases to operate, except for giving effect to estates or interests created by virtue thereof.

The registration is rescinded by operation of law (s. 38) in the case of bankruptcy or insolvency of the settler with twelve months of registration, or, if on his death, within such period, his estate is insufficient, without recourse to the homestead, to pay his debts.

Children.

The State Children Act, 1895 (No. 641), forms an elaborate code for the supervision, control, and maintenance of convicted, destitute, or neglected children, received into or committed to an institution, or apprenticed, or placed out under the authority of any colonial legislation. It may be described as a combination of the features of the Reformatory and Industrial Schools Acts and the Infant Life Protection Acts.

It includes provisions for the licensing and inspection of lying-in homes and the licensing of foster-mothers; and regulating the extent of liability of relatives for the maintenance of any State child. The Act is administered by a State Children's Council.

Colonial defences.

The Defences Act, 1895 (No. 643), consolidates and amends the legislation as to the defences of the colony.

It regulates—

(1) The military forces of the colony, viz.

(*a*) Officers and soldiers permanently employed;

(*b*) The active military force; and

(*c*) The reserve military force.

The limit of service is to Australia and Tasmania (s. 19).

(2) Defence Rifle Clubs, which may be formed under the Act by associations of thirty men or more, over eighteen years of age, and are to be provided by the Government with rifles and ammunition, and may, if required, be enrolled in the military forces.

(3) The South Australian National Rifle Association, which is a voluntary association under the presidency of the commandant of the colonial forces, formed of individual members of the forces above named, or of British subjects resident in the colony. *SOUTH AUSTRALIA.*

It does not apply to the colonial naval forces. S. 11 renders every male inhabitant of the colony, between eighteen and forty-five, fit and able to bear arms, being a British subject by birth or naturalization, resident in the colony for six calendar months, liable to serve in the colonial forces in the case of actual invasion or the imminent prospect thereof.

S. 55 provides for calling out the forces in the case of actual or apprehended invasion, or actual or apprehended rebellion or insurrection in the colony.

Numerous exemptions are given (from judges of the Supreme Court to aborigines.)

SS. 81, 82 embody the Provisions of the Imperial Uniforms Act, 1890 (57 & 58 Vict. c. 45).

Opium. The Opium Act, 1895 (No. 644), forbids the supply of opium to aborigines or half-castes.

Defamation. The Law of Libel Amendment Act, 1895 (No. 646), amends the law of libel in several important particulars. SS. 3, 4, 7–10 adapt to the colony ss. 3–7 of the Imperial Act of 1888 (51 & 52 Vict. c. 64). S. 5 provides a new summary criminal remedy—subject to appeal (s. 6) in the case of unfair or inaccurate reports under ss. 3 and 4. Use of the remedy is waiver of other civil or criminal remedies. Under s. 11 the imprint of a newspaper or book is made *primâ facie* evidence of publication by the defendant. Under s. 12 when evidence is given of the publication of a newspaper, other prints purporting to be other numbers or parts of the same newspaper, containing a printed statement that they were published by or for the defendant, are admissible without further proof of publication.

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[*Contributed by W. F. Craies, Esq.*]

Acts passed, 35.

A great deal of the legislation of the colony for 1895 is directed—

(1) To experiments for the encouragement of local industries, and the export of local products; and

[1] The Session 59 Vict. ended in December, 1895.

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(2) To obliterating the disastrous effects on the colony of the failures of many banks, and the attendant agricultural and pastoral depression.

Companies. The Foreign Companies Act of 1895 (No. 2) applies to foreign companies legislation on lines similar to that applied to British companies by an Act of 1886 (50 Vict. No. 31).

A foreign company is defined (s. 3) as a joint stock company, or other company or society incorporated according to the laws of a country other than her Majesty's dominions, and which under the laws of the country of incorporation has perpetual succession and a common seal.

Such a company may procure its registration in Queensland (s. 3), and for the purpose must lodge with the colonial Registrar of joint stock companies either—

(1) A certificate of incorporation under the hand of the proper officer of the country of incorporation, and under the seal, if any, of his office, with a copy certified by him of the memorandum and articles of association, deed of settlement, or other instrument, declaring the constitution and functions of the company; or

(2) If the company was incorporated by Act, Ordinance, or Charter, a copy thereof certified under the hand of a Secretary of State of the country of incorporation, and under the seal, if any, of his office, or certified under the hand of a British diplomatic or consular officer or notary public, and under the seal of his office; or

(3) Such other evidence of incorporation as the Registrar may require.

In cases (2) and (3) the company must also deliver to the colonial Registrar a copy of every deed of settlement, or other instrument, declaring the constitution or functions or the company.

The registration is subject to the payment of fees to be prescribed by the Governor in Council, not exceeding those payable on the registration of a joint stock company under the laws of the colony.

The Registrar, when the required evidence is lodged, is to issue a certificate of registration in the scheduled form, and a copy is to be published in the Government *Gazette* (s. 6), a copy of which is made evidence of such registration (s. 10).

The company must also have a registered office in the colony, notice of which must, under penalty, be given to the colonial Registrar (s. 8).

Registered foreign companies may sue and be sued in the colony (s. 7) as if there incorporated; and process against such companies

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may be served by being left at the registered office, with some person there; or, if there is no such office or no person is there found, by affixing the process in the office of the registrar of the court from which it issued (s. 9).

Religious, educational, and charitable institutions.

(1) The Religious, Educational, and Charitable Institutions Act of 1895 (No. 4), repeals s. 3 of the Religious, Educational, and Charitable Institutions Act of 1861 (25 Vict. No. 19), prescribing certain formalities to be observed in gifts to such institutions.[1] The rest of the Act (ss. 4–7) deals with the cancellation of letters patent issued under the Act of 1861.

(2) The Church of England Act of 1895 (No. 15) provides for the better management of the property and affairs of the Church of England in the colony. It schedules a "consensual contract" described as the "Constitution for the Diocese of Brisbane."

Encouragement of agriculture.

(1) The Harbour Dues Act of 1895 (No. 5), apparently aiming at the encouragement of the export of colonial green fruit and vegetables, exempts them from harbour dues, when shipped within or exported from the colony (s. 3).

(2) The Meat and Dairy Produce Encouragement Act of 1895 (No. 6) amends Acts on the same subject passed in 1893 and 1894. The Act of 1893 (57 Vict. No. 11) created a "meat and dairy produce export tax," to be levied in 1893, 1894, 1895, and 1896, at 15*s.* per hundred cattle, and 1*s.* 6*d.* per hundred sheep, payable by the owners. The funds raised by the tax were to be appropriated, by way of advances, to "meat works" and "dairy works" to be made on mortgage security, and to be repayable, with interest at 5 per cent., in ten years.

The Act of 1894 (58 Vict. No. 28) provided for the grant of a bonus on the export of dairy products to countries outside Australasia. The bonus is only payable on products of the best quality suitably packed for export (s. 4).

The Act of 1895 provides for the issue of certificates of payment of the tax, and for repayment of its amount out of the surplus of the funds arising under the Act, and for distributing any ultimate surplus among the taxpayers. It also directs that distinct accounts of advances and taxes are to be kept for each district of the colony, and that repayments are to be made out of the district funds.

(3) The Sugar Works Guarantee Act of 1895 (No. 14), empowers the Government to purchase debentures in companies guaranteed under the Act of 1893 (57 Vict. No. 18), until debentures up to £500,000 have been purchased or guaranteed. The debentures are

[1] This part of the Act is consequent on the decision in McSwaine *v.* Lascelles (L. R. (1895), A. C. 618).

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issued to defray the cost of mills, etc., for the extraction and manufacture of sugar. Under s. 16 of the Act of 1893, when a guaranteed company is in default with interest on its debentures, the Colonial Treasurer is entitled to fix the price to be paid by the company for sugar-cane purchased for crushing.

(4) The Live Stock and Meat Export Act of 1895 (No. 26) provides (ss. 5, 6) for the inspection before shipment of all live stock (*i.e.* cattle, sheep, and pigs), or meat intended for exportation from the colony. No stock or meat may be shipped without a certificate of soundness and freedom from disease; and in the case of live stock the inspector must be satisfied that proper arrangements have been made for the accommodation, food, and water to be provided for the live stock during the voyage.

The Governor in Council is empowered (s. 7) to make regulations on a large number of matters relating to the inspection of meat-works and ships, and to the protection of live stock while awaiting shipment, and to the adequate accommodation and food for live stock on board ship.

Supreme Court.

(1) The Supreme Court Funds Act of 1895 (No. 7) is an adaptation to the colony of the Court of Chancery (Funds) Act, 1875 (35 & 36 Vict. c. 44), and the Supreme Court of Judicature (Funds) Act, 1883 (46 & 47 Vict. c. 29). It creates a single accounting department of the Supreme Court (s. 5), abolishes the office of the accountant-general of the court, and transfers his duties to the Colonial Treasurer (s. 6).

The rate of interest payable on deposits in court is £1 10*s.* per cent.; but in all other respects the Imperial Acts are closely followed. Regulations may be made under the Act by the Governor in Council on the recommendation of the judges of the Supreme Court for carrying into effect the financial provisions of the Act (s. 21), and the judges may make rules of court to regulate the procedure and practice for carrying into effect the Act and regulations made under it (s. 22).

(2) The Supreme Court Act of 1895 (No. 21), creates a Northern and a Central judicial District of the Supreme Court,[1] in addition to the ordinary sittings of the court at Brisbane, and assigns to each district a judge of the Supreme Court styled respectively the Northern and the Central judges. The Act also provides for appointing sheriffs, prothonotaries and registrars for each district. The seat of the Northern Court is at Townsville, and that of the Central Court is at Rockhampton; but provision is made for circuits within the districts.

Gaming.

The Suppression of Gambling Act of 1895 (59 Vict. No. 9) deals with lotteries, betting houses, and betting with infants.

[1] Before the Act only a Northern District existed.

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Part II. is directed against lotteries, *i.e.* "any scheme or device for the sale, gift, disposal or distribution of any property depending or to be determined by lot or chance, whether by the throwing or casting of any dice or the drawing of any tickets, cards, lots, numbers or figures by means of any wheel or trained animal or otherwise howsoever" (s. 4).

"Sweeps," "consultations," and "missing-words competitions" are also to be deemed lotteries (ss. 8, 9). All such lotteries are declared illegal, as are the making of bets dependent on the result of the working of the "totalisator"[1] on a horse race, and dealing in tickets or cards, entitling the purchaser to any interest in the result of the working of the "totalisator" on a horse race.

Art Unions are exempted from the operation of this part (s. 14).

Part III. deals with betting houses, and is a consolidation of the Imperial Acts 16 & 17 Vict. c. 119; 17 & 18 Vict. c. 38; and 37 & 38 Vict. c. 15.

Part IV. applies to the colony the provisions of the Infants Betting and Loans Act, 1892 (55 & 56 Vict. c. 4), as to betting with infants, with the addition of a penalty on persons selling to infants, or buying for infants "totalisator" tickets.

S. 33 re-enacts for the colony the Gaming Act, 1892 (55 & 56 Vict. c. 9).

Administration of Estates.

The Succession Act Amendment Act of 1895 (No. 10) adapts to the colony the Intestates Estates Act, 1890 (53 & 54 Vict. c. 29).

Railways.

(1) The Railways Act of 1895 (No. 11), provides for the appointment of a single commissioner of railways, for a term not exceeding three years, at a salary of £3000 per annum.[2]

(2) Another Act, the Railways Guarantee Act of 1895 (No. 17), is intended to facilitate the construction of Government railways, by empowering local authorities to guarantee their profitable working, and to levy rates for the fulfilment of the guarantee. The powers of a local authority to give a guarantee are subject to the right of twenty ratepayers to demand a poll; and on such poll, consent of the majority of votes is necessary to authorize the guarantee.

Reduction of Colonial Debt.

The Audit Act Amendment Act of 1895 (No. 13) creates (s. 2) a Public Debt Reduction Fund out of the surplus of receipts and expenditure appearing by the Treasurer's annual statement. The surplus is to be paid over to trustees (the president of the Legislative Council, the speaker of the Legislative Assembly, and the Colonial Treasurer).

[1] This contrivance may be lawfully used in the colony subject to the Totalisator Restriction Act of 1889 (53 Vict. No. 2).

[2] Under previous legislation of the colony the State railways were managed by three paid commissioners (52 Vict. No. 8, ss. 7–10).

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To the same trustees are also to be paid over on or before December 31 (1) the balance of moneys which on the previous June 30 stood to the credit of the "Treasury bills account" created by s. 6 of the Special Sale of Land Act, 1891 (55 Vict. No. 21), an Act passed for the purpose of retiring certain outstanding Treasury bills by the sale of country lands; and (2) the unexpended balance of the "Surplus Revenue Trust account."

The trustees are to apply their funds—

(1) In payment and discharge of Treasury bills issued and sold in aid of the colonial revenue;

(2) In redeeming and cancelling unsold Treasury bills issued in aid of the revenue; and

(3) In redeeming Government debentures and inscribed stock at the current market price.

The Act also provides for the cancellation and destruction of the redeemed securities, and for writing off inscribed stock on redemption (ss. 6–8).

An annual report is to be laid before Parliament of the proceedings of the trustees (s. 9), and their accounts are to be audited under the Audit Act of 1874 (38 Vict. No. 12).

Commons; Mines.

The Goldfields Act Amendment Act of 1895 (No. 18) amends the Goldfields Act of 1874 (38 Vict. No. 11). It creates "goldfields commons" (to consist of all lands not disposed of in certain ways within the boundaries of the goldfield); and empowers (s. 5) the Governor to make regulations for the management of the commons, and for giving effect to commonage rights, and for limiting the amount of stock to be depastured by one person, and as to charges for agistment of cattle on such commons, and for impounding stray cattle.

Savings banks.

The Savings Banks (Securities) Act of 1895 (No. 20) was passed in consequence of the financial difficulties created by the wholesale failure of Australian banks.

It authorizes the issue of Government debentures in respect of savings bank moneys deposited with the Queensland National Bank, Limited, at the date of its suspension of payment, which are to be treated as investments of savings bank money, and to bear interest at a rate not exceeding $3\frac{1}{2}$ per cent., chargeable on the colonial revenue.

Provision is made (s. 9) for redeeming the debentures out of money received from the Queensland National Bank, and (ss. 10, 11) for deposit and sale of savings bank securities outside the limits of the colony.

Co-operative communities.

The Co-operative Communities Land Settlements Act of 1895 (No. 22) amends the Acts on the same subject of 1893 (57 Vict. No. 16),

and 1894 (58 Vict. No. 12) which provided for the establishment of agricultural co-operative communities. *QUEENSLAND.*

The Act of 1893 (Part II.) authorized the creation of self-governing communities or groups of not less than thirty male persons eligible to apply for and hold lands. On their recognition, the Governor sets apart an area, not exceeding 160 acres for each member of the group, which the group must occupy and improve. The members have no individual interest in the freehold or improvements; but at the end of the period for which the area is set apart the members, unless debarred by the social rules, may acquire their proportion of the freehold.

The Act of 1893 also authorized advances to groups, and the creation of labour colonies (ss. 45–53).

The Act of 1895 permits (ss. 3–9) the dissolution of groups by proclamation of the Governor in Council (s. 3). The effect of dissolution is to absolve and discharge all members from all liability for advances made to the group or to the wife of a member, and the group assets are vested in the Minister for Lands for division and allocation among the members, as nearly as may be in the manner provided under the Act of 1893.

Upon such division each member to whom an allotment is assigned gets an occupation licence, under which he occupies at a rent of 3*s.* 4*d.* per acre per annum (s. 5). The licences are not transferable; nor can the allotment be incumbered as a security for money, or underlet, or sold under a writ of execution; nor does it vest in the trustee in bankruptcy of the licensee. It is, however, subject to levy or sale for rates or taxes, and to remedies for debt for rent due to the Crown (s. 6). The tenant can acquire the freehold on proving in open Court in the last year of his licence term that he has satisfied the conditions of occupation and on payment of 2*s.* 6*d.* per acre (s. 8).

SS. 10, 11 regulate the division of existing groups into two or more groups, and the rules and membership of the new groups: and s. 12 empowers the Governor in Council to make further advances, not exceeding £1000, to the communities specified in the schedule to the Act of 1893.

The Marsupials Act of 1895 (No. 27) repeals the Marsupials Destruction Act of 1892 (56 Vict. No. 25), and makes further provision for the destruction of "marsupials," *i.e.* "kangaroos, wallaroos, wallabies, paddamellons, bandicoots, or kangaroo rats," and of dingoes (s. 31). **Marsupials.**

SS. 5–17 deal with the creation, duties, and proceedings and expenses of Marsupial Boards. The electors have from one to three votes, according to the number of sheep or cattle owned by them.

SS. 18–28 create a marsupial fund, provided by an assessment not

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exceeding 2*s.* 6*d.* for every twenty head of cattle or hundred sheep, with certain provisions for the exemption of small owners.

Besides the collection of the marsupial fund, the chief duty of the board is to appoint receivers of the scalps of marsupials and dingoes (s. 17 (10)), to issue permits authorizing any person to go on land to kill marsupials (s. 17 (11) (*c*)), and to provide for the manner in which the scalps of marsupials and dingoes shall be delivered to officers of the board (s. 17 (11) (*d*)).

The Act also permits the grant of bonuses for the scalps of marsupials and dingoes, and for the scale on which the bonus is to be calculated. The scalps delivered must be of animals killed in the colony (ss. 29–36).

Rabbits. The Rabbits Act of 1895 (No. 32) contains a series of elaborate provisions for the creation of Rabbit Boards, the destruction of rabbits, and the erection of wire netting to prevent their incursions.[1]

It amends Acts on the same subject passed in 1891 (55 Vict. No. 30) and 1894 (58 Vict. No. 15).

Death duties. The Succession and Probate Duties Act of 1892 Amendment Act of 1895 (No. 28) imposes a succession duty on the issue of any grant of probate or administration in Queensland. The duty is chargeable in respect of all property in Queensland, although the testator or intestate may not have had his domicile in Queensland (s. 2).[2]

The share or other interest of a deceased member registered in a branch register of a company incorporated under the Colonial Companies Acts is to be deemed part of his estate and effects situate in Queensland.

Ancillary probate or administration is not to be granted until security for succession duty is given (s. 3).

S. 4 empowers the Commissioners to compound the succession duties in cases of difficulty or complicated circumstances.

When it is made to appear to the Governor in Council that the Legislature of the United Kingdom or of any British possession has made provision to exempt from duty the property in Queensland of any person dying domiciled in the United Kingdom, or in such British possessions, the Governor in Council may direct that the property in the United Kingdom, or of any British possession of any person

[1] The importation and keeping of rabbits within the colony is prohibited by the Rabbits Act of 1885 (49 Vict. No. 4). By an Act of 1889 (53 Vict. No. 8), the Governor was empowered to proclaim any animal to be "a natural enemy of the rabbit;" whereupon the natural enemy is protected from destruction or capture, except by aboriginals (ss. 5, 6).

[2] See Finance Act, 1894 (57 & 58 Vict. c. 30), s. 20.

dying in Queensland shall not be liable to succession duty in Queensland (s. 5).[1] *QUEENSLAND.*

The Liquor Act of 1895 (No. 29) amends the Licensing Act of 1885 (49 Vict. No. 10) in a number of details. But the only points calling for special notice are— **Intoxicating liquors.**

(1) The provision of a special licence for the sale of wine, cider, or perry, the produce of fruit grown in the colony, and not containing more than 32 per cent. of proof spirit (ss. 8–11). Holders of these licences must sell only the native article; and—

(2) Prohibition of the sale of liquor, except for medicinal purposes, to any aboriginal native of Australia, or the Pacific Islands, or any Polynesian born in the colony, or to half-castes of these races.

The Brisbane Traffic Act of 1895 (No. 34) regulates the traffic of licensed vehicles in the city and suburbs of Brisbane. The area comprised by the Act includes four municipalities, and the scheme of the Act somewhat resembles that of the Acts creating the Metropolitan Police District. It establishes a body of six persons styled "Metropolitan Transit Commissioners," one of whom, the Commissioner of Police, sits and presides *ex officio;* one is elected by the holders of licences for vehicles under the Act, and four by the local authorities whose districts are put under the jurisdiction of the Commissioner. **Street traffic.**

Under s. 28 the Commissioners are empowered to make bye-laws on the following subjects :—

(1) The form and construction of vehicles used for the conveyance of passengers for hire;

(3) (4) Licences for drivers and conductors of passenger vehicles, including tramcars, and for carriers or carters or water-drawers;

(12) Regulating funeral processions, and prohibiting or regulating processions generally;

(13) Prohibiting or regulating the holding of meetings or the use of musical instruments on roads;

(14) Prohibiting the obstruction of public traffic on roads;

(16) Temporary diversion of the traffic of vehicles and horses from any road; and—

(19) Regulating the use of bicycles, tricycles, and other velocipedes.

[1] See Finance Act, 1894 (57 & 58 Vict. c. 30), s. 20.

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[*Contributed by W. F. Craies, Esq.*]

Acts passed, 41.

Western Australia acquired a constitution as a colony self-governed by parliamentary institutions, under the Western Australian Constitution Act, 1890 (53 & 54 Vict. c. 26). SS. 39–41 of the bill scheduled to that Act provided for the parliamentary franchise in the colony.

An Interpretation Act has not been passed for the colony; but it is usual to incorporate in such Acts as require it the whole or part of the provision of "The Acts Shortening Ordinance" (16 Vict. No. 11), which is based on Brougham's Act, but also contains a series of common form clauses to be incorporated by reference in subsequent legislature.

Customs duties. Export. Import. (1) The Export Duties Repeal Act, 1895 (No. 1), repeals certain ordinances which imposed export duties on pearl-shell and sandal-wood.

(2) The Import Duties Repeal Act, 1895 (No. 8), repeals the customs duties on a number of articles, including tea, sugar, coffee, cocoa, and explosives (other than gunpowder).

Standard time. The Standard Time Act, 1895 (No. 2), established a standard time for the colony. The Act is almost in the same words as that of New South Wales (*ante*, p. 27), but selects as the standard the mean time of the 120th meridian east of Greenwich.

Uniforms. The Uniforms Act, 1895 (No. 4), adapts to the colony the Imperial Act (57 & 58 Vict. c. 45), and also repeals some similar provisions made by the Colonial Defence Act, 1894 (57 Vict. No. 2).

Post-office savings bank. The Post-office Savings Bank Interest Act, 1895 (No. 5), amends the Post-office Savings Bank Consolidation Act, 1893 (57 Vict. No. 3), by striking out (s. 2) the statutory rate of interest there specified, viz. £3 15*s.* per cent., and by empowering the Governor in council to alter the rate from time to time by notice in the Government *Gazette*.

The notice (s. 4) may fix the interest for the next six months, or longer, and (s. 5) must be posted at the entrance to and under every savings bank, for the information of depositors.

Agent-General. The Agent-General Act, 1895 (No. 7), regulates the appointment and tenure of office of the Agent-General. He is to be appointed by the Governor at a salary of £1500 a year exclusive of travelling expenses, payable monthly out of the Consolidated Revenue Fund of the colony (ss. 1, 2). The tenure of office is for three years subject to suspension or renewal at any time by the Governor (s. 4). No

[1] The general and local acts are not separately classified.

compensation is to be claimed for loss of office or diminution of its emoluments. S. 6 forbids any person appointed during the tenure of office from acting as a director of or holding any office in any company or syndicate whatsoever whether incorporated or not. *WESTERN AUSTRALIA.*

The duties of the Agent-General are to do and perform all acts, matters, and things in the United Kingdom, and elsewhere in relation to the colony, in accordance with such instructions as may from time to time be given or transmitted to him by the minister who is, by appointment of the Governor for the time being, the channel of communication between the colony and the Agent-General.

The Municipal Institutions Act, 1895 (No. 10), an Act of 239 sections, consolidates and amends the law as to the constitution, election and finance, and the powers of municipal bodies. It repeals eleven Ordinances and Acts. **Municipalities.**

Any town and locality containing rateable property, capable of yielding £300 by a rate not exceeding 1*s.* in the £, may be proclaimed as a municipality by the Governor (s. 9). An elector has from one to four votes, according to the value of his rateable lands (s. 38). The powers as to making bye-laws are extremely large (s. 99), but the main lines of the Act are the same as those of the English Municipal Corporations Act, 1882, 45 & 46 Vict. c. 50, and the Town Police Clauses Act, 1847, and the Public Health Acts, except that the purely sanitary portions of the latter are not included.

The Justices Appointment Act, 1895 (No. 11) empowers the issue of commissions of the peace for magisterial districts created under the Magisterial Districts Act, 1886 (50 Vict. No. 17), and the assignment of justices to particular districts. Under prior legislation a justice acted for the whole colony. **Justices of the peace.**

Under the Act of 1895, members of the Executive Council, judges of the Supreme Court, chairmen of general session, and police and resident magistrates, are *ex-officio* justices for the whole colony (s. 8), subject to the power of the Governor (except as to the Council or Supreme Court) to prohibit an *ex-officio* justice from acting.

To the Act is scheduled a form of commission of the peace, and provisions are made as to the exercise of jurisdiction by the justices so commissioned.

The Perth Mint Act, 1895 (No. 12), which was reserved for her Majesty's pleasure, provides for establishing a branch of the Royal Mint at Perth, to be maintained out of the consolidated revenue of the colony. **Mint.**

The Arbitration Act, 1895 (No. 13), adapts to the colony the provisions of the Arbitration Act, 1889 (52 & 53 Vict. c. 49), with **Arbitration.**

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some amendments suggested by the decisions on the Imperial Act and colonial experience. Thus, in s. 7 (s. 5 Imp.) a clause is added "where in any other case it is necessary to appoint or nominate, either originally or by way of substitution, an arbitrator or arbitrators, or an umpire, and any difficulty arises in connection with such appointment or nomination;"[1] and in s. 13 (1) (Imp. Act, s. 11 (1)), an umpire or arbitrator may be removed, if he has left the colony or is directly or indirectly interested in the matter referred.

The arbitrators fees may be taxed by leave of the Court (s. 15).

Land surveyors.

The Licensed Surveyors Act, 1895 (No. 14), repeals an Act of 1886 (50 Vict. No. 6), and constitutes a Land Surveyors Licensing Board, consisting of the Surveyor-General and of five other members appointed by the Governor. This board is to hold examinations and to grant licences—

(1) To persons who satisfy their examiners and receive a certificate of competency in surveying; and

(2) To persons holding certificates of competency—

(*a*) From any legally constituted Board of Examiners in an Australian colony, or

(*b*) From an authority which applied examination tests as severe as those of the colony.

Licences may be refused to persons of unsatisfactory character (s. 6 (5)). A register of licensed surveyors is kept, and the Board, upon inquiry, may suspend or cancel licences where a surveyor has given false certificates of survey or made inaccurate or deficient surveys.[2]

Intoxicating liquors.

The Railway and Theatre Refreshment Rooms Licensing Act, 1895 (No. 15), amends the principal Act of the colony regulating the sale of intoxicants, the Wines Beer and Spirits Sale Act, 1880 (44 Vict. No. 9). It empowers (Part I.) the grant of annual licences at a fee of £15 for refreshment-rooms in theatres to the owner, lessee, or occupier of the theatre, or with his consent to any other person; and (Part II.) the grant of licences to the lessee or occupier of a refreshment-room or stand at a railway station. The licence is granted by the Colonial Treasurer in the case of a private railway. The licence limits the right of sale to reasonable times before and after the arrival and departure of a train.

[1] See *Re* Smith and Nelson, 25 Q.B.D., 545.

[2] S. 15 allows a licensed surveyor to enter upon any lands for the purpose of defining boundaries between different tenements, or for any purpose necessary to enable him to carry out any survey which he is employed to make; subject to liability for damage committed, but with a right in such cases to indemnity from his employers.

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The Fertilizers and Feeding Stuffs Act, 1895 (No. 16), adapts to the colony the provisions of the Fertilizers and Feeding Stuffs Act, 1893 (57 & 58 Vict. c. 56). The regulations of the Colonial Act as to the appointment of the analyst, are somewhat different from those of the Imperial Act, and both vendor and purchaser are given a right to have a fertilizer or food stuff analyzed by the agricultural analyst appointed by the Governor (s. 5). **Adulteration.**

In the definition clause 11 (2), the word "cattle" is made to include dogs, camels, asses, mules, and poultry, besides the animals specified in s. 8 (1) of the Imperial Act.

The Medical Act Amendment Act, 1895 (No. 17), amends the Medical Practitioners Act, 1894 (58 Vict. No. 36), as to the medical qualifications of the other colonies to be recognized in Western Australia. **Medical profession.**

The Duties on Deceased Persons Estates Act, 1895 (No. 16), regulates the imposition and collection of graduated duties on the real and personal estates of deceased persons. Estates which, after deducting debts, do not exceed £1500 are free from duty. Estates between £1500 and £2500 are charged 1 per cent. on the excess over £1500. Estates above £2500 are charged without deductions, in an ascending scale, beginning at 2 per cent., and ending at 10 per cent. on estates exceeding £100,000 (schedule 2). **Death duties.**

The executor or administrator must file in the office of the Master of the Supreme Court, within three months of the grant of probate or letters of administration, statements specifying: (1) the particulars of the deceased's property and debts; (2) the situation and extent of the freehold lands of the deceased.

Debts secured by mortgage are to be stated only so far as the mortgage is an insufficient security, and the mortgages are to be specified in the statement as to lands. The form of statement is scheduled, and it must be verified by affidavit (s. 6 and schedule 1).

Where the Master is dissatisfied with the value put upon the estate by the executor and administrator, he appoints a valuer, and if his report differs from that of the executors, the Master can either agree the value or call in his own valuer and the executor or his valuer before him and hold a sworn inquiry, with resort to books and documents, and thereon determine the value, subject to appeal (s. 9). The duty is imposed on the final balance after the valuation is settled, and is payable out of the personal estate, or, if it be insufficient, the real estate, with a right in the executor or administrator to deduct from the beneficial interests (ss. 12, 13). If the duty is not paid at the prescribed time, the court, on the application of the Master, may

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order sale of enough of the estate to cover the duty (s. 11). Dealing with the estate in the meanwhile is protected by a provision for keeping the probate and letters of administration in court till the duty is paid, subject to their production, whenever needed, after security for the duty has been given (s. 14).

The Act also deals with settlements. Every voluntary settlement must be registered within two months of the settlor's death (s. 7), and provisions similar to those applied to executors are prescribed for trustees. The settlement is made liable to death duty in the same way as property passing under will or intestacy (s. 10 (*b*)).

Religious, etc., associations.

The Associations Act, 1895 (No. 20), authorizes the incorporation of religious and other associations. The term association includes "churches, chapels, schools, hospitals, benevolent institutions, mechanical institutes, societies for literature, science, or art, and general societies certified by the Attorney-General, and not formed for trade or pecuniary gain."

The Act prescribes the procedure for and effect of incorporation (ss. 3–7), excludes personal liability of members, vests the property of the body in the corporation, subject to all trusts, duties, and liabilities affecting it (s. 10), and provides for the mode of making, varying, or discharging corporate contracts (s. 15).

Ecclesiastical endowments.

The Ecclesiastical Grant Abolition Act, 1895 (No. 25), provides for the termination of the Parliamentary Ecclesiastical Grant to religious bodies by the payment of £35,400 to the Church of England and the Roman Catholics, Wesleyans, and Presbyterians.

Married woman's property.

The Married Woman's Property Act, 1895 (No. 22), adapts to the colony the Married Woman's Property Act, 1893 (56 & 57 Vict. c. 63).

Partnership.

The Partnership Act, 1895 (No. 22), is a re-enactment of the Partnership Act, 1890 (53 & 54 Vict. c. 39).

Sale of goods.

The Sale of Goods Act, 1895 (No. 41), is a re-enactment for the colony of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71). The corresponding Imperial sections are printed in the margin of the Act.

Copyright.

The Copyright Act, 1895 (No. 24), an Act of 59 sections, is a code of the Copyright law of the colony. It is framed by including many provisions of the Imperial Acts; but is also largely drawn from the Copyright Act (54 Vict. No. 1076) of the colony of Victoria. The source of each borrowed or adapted section is indicated in the margin of the corresponding colonial enactment.

Education.

The Assisted Schools Abolition Act, 1895 (No. 27), discontinues grants out of the public funds in aid of further elementary schools

founded by voluntary effort and not belonging to the Government. As compensation for loss of the grants in aid, the sum of £15,000 is set aside for distribution among the assisted schools.

Transfer of property.

The Trustee Ordinance, 1854, Amendment Act, 1895 (No. 28), enacts that a decree or order by the Supreme Court for the sale of any land shall constitute every person seized or possessed of the land or bound by the decree or order, a trustee within the meaning of the Trustee Ordinance of 1854 (17 Vict. No. 10). The Court can vest the estate of such trustee in the purchaser, and the vesting order has the effect of a conveyance by the trustee.

Buildings.

The Buildings Act, 1894, Amendment Act, 1895 (No. 29), empowers municipalities brought within the Act to make bye-laws and regulations as to sites, walls, construction, etc. The powers correspond closely to those of the Public Health Act and the London Building Act, 1894 (57 & 58 Vict. c. ccxiii.).

Parks and reserves.

The Parks and Reserves Act, 1895 (No. 30), deals with the creation of boards for the management of parks and reserves vested in the Crown. The boards are appointed by the Governor, and are given power to make and enforce bye-laws for the conservation and regulation of the parks and reserves and the maintenance of order therein.

Parliamentary elections

The Electoral Act, 1895 (No. 31), an Act of 123 sections, consolidates and amends the law as to Parliamentary elections.

Part II. (ss. 4–50) deals with the registration of votes. For each district returning a member or members to the Assembly there is an Electoral Registrar appointed and removable by the Governor.

This Registrar is supplied annually with correct lists of the deaths of adult males within his district (s. 8) and of ratepayers (s. 9.) Claims for registration are made to and examined by him (ss. 11–19), and if dissatisfied with a claim he may call the claimant to prove it before a registration court, which is held quarterly. This Court is constituted (under s. 6) of certain magistrates or justices, or persons named *ad hoc* by the Governor. The procedure of the court is regulated by ss. 20–24; and any person may, instead of sending in a claim to the Registrar, attend before the court and prove his claim orally. After the court is held, a quarterly list is made out and published. Objections to any names on the list are considered at the quarterly courts held in October, January, and April. Provision is made to secure, one man, one vote, by not allowing a vote to appear on any revised list for more than one district (s. 28). The quarterly lists, on revision are sent to the Electoral Registrar, and are printed alphabetically and returned to the returning officer. This print is styled the Quarterly Electoral Roll (s. 29). The returning officer has to examine

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this roll with the rolls of other districts to detect and expunge names which are entered in more than one district. SS. 30–46 deal with the making of an annual electoral list by the Registrar. This is effected by taking in February of each year the last quarterly list and striking out all persons "dead, left, or disqualified." But notice must be sent to all persons proposed to be omitted. The Registrar then prepares electoral lists which are revised by the Registration Court and the annual Electoral Roll is framed therein.

Part III. deals with the conduct of elections, which are by the ballot; and Part IV. with election offences. Under s. 107 it is illegal for a candidate personally to solicit votes or to attend a meeting of electors within twenty-four hours of the commencement of the poll.

Diseases of animals.

The Stock Diseases Act, 1895 (No. 34), consolidates and amends the law relating to diseases in "stock," which is defined as including (besides its ordinary connotation) "camels, all ruminants, dogs, and poultry." The Act is mainly if not wholly directed to animals imported by sea or land.

SS. 5, 6 empower the Governor by Order in Council to prohibit, or to permit, subject to restrictions or regulations, the importation of stock. No stock is to be landed until the master of the ship has made a declaration, and the stock has been examined by an inspector, and a permit given and a certificate produced given by a qualified veterinary surgeon, that the stock was sound when shipped (ss. 12–14). If not infected, the stock is subject to quarantine for a period (ss, 15, 16). S. 14 absolutely prohibits the landing of any fodder or fittings used for, with, or about imported stock.

Inspectors of stock may be appointed, who have power to enter any vessel and any land or building to inspect stock and to enforce the Act and regulations; and are to receive notice of all infection or suspected infection.

Public health.

The Public Health Act Further Amendment Act, 1895 (No. 35), amends the Public Health Act, 1886 (50 Vict. No. 19), the principal colonial Act on the subject. It empowers (s. 5) the Governor to put under the jurisdiction of a municipality for public health purposes any area of land actually adjoining. This does not otherwise affect the local government of the area, but under ss. 8–13 Local Boards of Health may be established in localities outside municipal districts; and the members are appointed by the Governor.

The Act contains (ss. 14–23) elaborate provisions for regulating "lodging-houses," which are defined as "any dwelling of any kind, any house, building, tent, edifice, or other structure, permanent or otherwise, and any part of such premises (not being the licensed premises

of a licensed victualler) in which persons are harboured or lodged for hire for a single night or for less than a week at a time, and also any such premises and parts thereof as aforesaid, when more than six persons are boarded or lodged for hire from week to week or for more than a week."[1] *WESTERN AUSTRALIA.*

An allowance of five hundred cubic feet of air must be made for each person who sleeps in a lodging-house (s. 15); a register of lodging-houses is to be kept, and provisions are made for bye-laws, entry, notice of deaths or illness therein, removal of infectious cases to hospitals, and disinfection.

The compulsory registration of all private hospitals, and regulations as to infectious diseases and as to the management and sanitary condition of the hospitals, are prescribed by ss. 24–26.

Fires caused by railway engines.

The Engine Sparks Fire Prevention Act, 1895 (No. 36), is intended to prevent injury to agricultural produce and natural vegetation by sparks and cinders from locomotives. Every engine under steam must have a spark arrester of a pattern approved by the Governor in Council and in good order, and also a steam jet (to be in like manner approved and to be in good order), and to be so fitted as to extinguish cinders in the ash pan (s. 2). The engines are to be inspected (s. 4). The owners of railway lines are also required to burn the grass and herbage on either side up to the fences or for 66 feet on each side of the line (s. 4). In the event of damage by fire from sparks or cinders of an engine, the burden is put on the owner to prove that the Act has been complied with.

Highways.

The Width of Tires Act, 1895 (No. 39), regulates the width of tires to be manufactured, imported, or sold in the colony, for use on waggons, drags, carts, or lorries and such vehicles. A scale is given of the statutory proportion between diameter of axle-arm and the width of tire (ss. 2, 3). The diameter of the axle-arm is to be conspicuously painted on the vehicle (s. 7). The local authorities and their officers and police constables may examine and measure any vehicle, whether in use or in a factory or yard, to see if it is in accordance with the Act (s. 6.)

Mines.

The Mines Regulation Act, 1895 (No. 37), an Act of fifty-four sections, deals with the regulation and inspection of two classes of mines: (1) those in which either more than five persons are employed below ground; (2) those specially brought under the Act (s. 2). Mine is defined as "a claim, place, pit, shaft, drive, level, vein, lode, or reef in or by which an operation is carried on for obtaining any metal or

[1] The English Acts dealing with common lodging-houses contain no definition; the want of which is a perpetual source of administrative difficulty.

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mineral, by any mode or method whatever, or any shaft, level, or plane being sunk or driven for the same purpose;" and colliery as a "mine worked for the production of coal, slate, stratified iron-stone, or fire-clay. The Act combines the provisions of the Imperial Coal Mines and Metalliferous Mines Acts (35 & 36 Vict. c. 77; 50 & 51 Vict. c. 58).

Explosives. The Explosives Act, 1895 (No. 38), regulates the importation, carriage, storage, and manufacture and sale of explosives. The Act repeals the colonial Act, 49 Vict. No. 16, and is to a large extent a transcript of the Imperial Act of 1875 (38 & 39 Vict. c. 17), with modifications and with clauses borrowed from the Act of 1890 (No. 1090) of the colony of Victoria. It incorporates ss. 446–450 of the Imperial Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

Goldfields. The Goldfields Act, 1895 (No. 40), an Act of 102 sections, deals with the regulations of gold-mining and the management of goldfields on Crown lands within the colony. It repeals five colonial Acts, and deals with its subject matter in substantially the same manner as the legislation of New Zealand,[1] but with less elaboration. The provisions as to the necessity for and the effect of possession of miners' rights are contained in Part II.; Part III. deals with gold-mining leases, which are granted at a fixed rent of 20*s.* per acre, payable in advance (s. 34). Part IV. deals with the administration of justice between miners by the Wardens Court, subject in certain cases to an appeal to the judges of the Supreme Court on questions of law or the admission or rejection of evidence (s. 85).

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[*Contributed by W. F. Craies, Esq.*]

Acts passed—General, 74; Local, 18; Private, 1. Total, 93.

Uniforms. The Uniforms Act, 1895 (No. 3), adapts to the colony the provisions of the Imperial Uniforms Act, 1894 (57 & 58 Vict. c. 45).

Dogs. The Dog Registration Amendment Act, 1895 (No. 4), amends the Dog Registration Act, 1880 (44 Vict. No. 24), by permitting the exclusion by proclamation of the Chatham Islands from the operation of the

[1] See below, p. 72.

[2] The session 59 Vict. ended in November, 1895. The Acts of each session are divided into three classes—general, local, and private, and the Acts of each class are numbered consecutively. Some of the Acts classified as general would in the United Kingdom have been treated as local.

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Acts for the registration of dogs, and by allowing shepherds and drovers in every part of the colony to register three sheep or cattle dogs for a fee not exceeding *2s. 6d.*[1]

Industrial schools.

The Industrial Schools Act Amendment Act, 1895 (No. 5), amends the Industrial Schools Act, 1882 (46 Vict. No. 25), a consolidating Statute, which covers the same ground as the Imperial Industrial and Reformatory Schools Acts, and deals with two classes of schools—those established and maintained by the State, and local or private schools approved by the State. The chief object of the amending Act is to enable the public trustee to take possession of any property to which an inmate of an industrial school may become entitled, and to apply it for the maintenance of the inmate. S. 9 prohibits the punishment of an inmate by confinement in a dark room, or by putting him on bread and water for over twenty-four hours.

Cremation.

The Cemeteries Act, 1882, Amendment (Cremation) Act, 1895 (No. 6), authorizes (s. 4) the trustees of a cemetery to make provision for cremation, *i.e.* "the reduction to ashes of dead bodies by burning" (s. 3), and to erect within or without the limits of the cemetery a crematorium, defined (s. 3) as "appliances, machinery, and furnaces for effecting cremation," and as including "any building in which such appliance, machinery, or furnace is fixed."

Under ss. 5, 6 the trustees are given the requisite powers for the maintenance of crematoriums, and for regulating the method of cremation, and under s. 8 the Governor in Council may make regulations prescribing the conditions under which cremation may be effected.

Journalists.

The New Zealand Institute of Journalists Act, 1895 (No. 7), incorporates the New Zealand Institute of Journalists, empowers it to hold land (s. 4), and to make rules, regulations, and bye-laws (s. 9), subject to the power of the Governor in Council to declare them invalid (s. 10). Three of the nine objects of the institute recited in the preamble are—

(*a*) "Devising measures for testing the qualifications of candidates for admission to professional membership of the institute by examination on theory and in practice or by any other actual and practical tests."

[1] The Act of 1880 required the registration of every dog in the colony except in districts excluded by proclamation. On registration a fee of *10s.* is paid, and a State collar provided. An Act of 1890 (54 Vict. No. 6) gave shepherds and drovers not resident in boroughs or town districts the privilege extended to all such persons by the Act of 1895.

[2] This Act would in the United Kingdom have been treated as local and personal.

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(*c*) "The ascertainment of the law and practice relating to all things connected with the journalistic profession, and the exercise of supervision over its members when engaged on journalistic duties."

(*e*) "Watching any legislation affecting the discharge by journalists of their professional duties, and endeavouring to obtain amendments of the law affecting journalists their duties and interests."

Adoption of children.

The Adoption of Children Act, 1895 (No. 8), consolidates and amends previous colonial law on the subject. A child under fifteen may be adopted under an order of a district judge appointed under the District Courts Act, 1858 (21 & 22 Vict. No. 30), or of a stipendiary magistrate appointed under the Magistrates Courts Act, 1893 (57 Vict. No. 55). The order is made upon application in writing by the person desiring to adopt. Before making the order the judge or magistrate is to take evidence *vivâ voce*, or upon affidavit, as to any matter required by him or by the Act to be proved. He must be satisfied that the child is under fifteen, and that if over twelve it consents to the adoption, and that its welfare and interests will be promoted by the adoption, and that the person seeking to adopt is of good repute and a fit and proper person to have the care and custody of the child, and is of sufficient ability to maintain and educate it. He must also require the written consent of the parents or the survivor of them, whether living in or out of the colony, or where one parent has deserted the child, then of the other parent. If both parents are dead the consent of the legal guardian of the child is necessary. This provision as to consent does not apply where the child is a deserted child and has ceased to be cared for or maintained by its parents, or the survivor, or by its guardian, or, if illegitimate, by its mother (s. 2).

A child of either sex may be adopted by husband and wife jointly. A female child may be adopted

(*a*) By a married woman alone, with the written consent of her husband;

(*b*) By an unmarried woman, who in the opinion of the judge is at least eighteen years older than the child; or

(*c*) By an unmarried man, who in the opinion of the judge is at least forty years older than the child.

A corresponding provision is made as to the adoption of male children. Except in the case of joint adoption by husband and wife, a child may be adopted by only one person (s. 6).

The effect of adoption is to give the adopted child and parents the

legal status of legitimate children and natural parents for all purposes, civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences, except as to succession to property; and the child by the order of adoption is to acquire the name of the adopting parent (s. 12).

With respect to succession, it is provided that an adopted child does not

(*a*) acquire any right to property which would devolve on a child of the adopting parent under any deed, will, or instrument, prior to the date of the adoption, unless it is expressly so stated; or

(*b*) take property limited to the heir of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by representation; or

(*c*) acquire property vested, or to become vested, in any child of lawful wedlock of the adopting parent in the case of the intestacy of such child or otherwise than directly through the adopting parent.

The child can still (s. 8) take property as heir or next-of-kin of his natural parents, either directly or by representation, but in all other respects all the rights and responsibilities as between the natural parents and the child are terminated. The order of adoption may, however, be varied, reversed, or discharged with or without conditions (s. 8).

Deserted children may be adopted (s. 10) by the managers of any benevolent or other institutions established in connection with any religious denomination, and not supported by general subsidy. The application is to be made in writing, and the judge or magistrate is to be satisfied

(1) That the child is deserted;

(2) That the child is of the same religious denomination as the manager; and

(3) That the institution is properly conducted and capable of bringing up the child properly.

The order of adoption puts an end to all rights of the natural parents, and entitles the child to the support, maintenance, and advancement afforded by the institution (s. 11).

Criminal appeals.

The Criminal Code Amendment Act, 1895 (No. 9), is remarkable as giving to a named person then lying in prison under conviction for murder, a right to apply for a new trial under s. 416[1] of the Criminal

[1] Under this section a person convicted of crime may, by leave of the Court of trial, move the Court of Appeal for a new trial on the ground that the verdict was against the weight of the evidence.

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Code Act, 1893 (57 Vict. No. 56), notwithstanding the other provisions of the Code.

Evidence.

The Evidence Further Amendment Act, 1895 (No. 10), amends the law of evidence in many important respects, and may be described as a colonial solution of many controversies still raging in the United Kingdom.

S. 9 enacts that—

(1) "No minister[1] shall, without the consent of the person alleged to have made a confession, divulge in any proceeding any confession made to him in his professional character."[1]

(2) "No physician or surgeon shall, without the consent of his patient, divulge in any civil proceeding (unless the sanity of the patient be the matter in dispute) any communication which was made to him in his professional character by such patient, and which was necessary to enable him to prescribe or act for such patient." A proviso is added excluding from privilege communications for a criminal purpose or with a view to effecting a policy of insurance.

S. 11 limits the right of cross-examination as to credit. When a question put in cross-examination is relevant only so far as it affects the credit of a witness by injuring his character, it is the duty of the court to decide whether the question is proper or improper, and in the latter event to warn the witness that he need not answer. Such questions are declared to be proper if of such a nature that the truth of the imputation conveyed by them would seriously affect the credibility of the witness. They are improper if the imputation conveyed relates to matters so remote in time or of such a character that the truth of the imputation would either only slightly or not at all affect the credibility of the witness, or if there is a great disproportion between the nature of the imputation made on the character of the witness and the importance of his testimony.

It is the duty of the court also (ss. 13, 14) to forbid questions which are indecent or scandalous (even though they have some bearing on the questions at issue), or intended to insult, or annoy, or needlessly offensive in form. And it is made contempt of court to print or publish any question (1) forbidden or disallowed by the court; or (2) which the court has warned the witness he need not answer, and the court has ordered not to be published.

S. 16 enacts that on a charge of poisoning, in order to prove that the accused administered the poison as charged, or his intent in so

[1] "Minister" is defined as meaning an officiating minister under the Marriage Act, 1880 (44 Vict. No. 21), or any amendment thereof.

doing, it may be proved that he administered, or attempted to administer, poison on other occasions to the same or other persons.[1]

S. 17 modifies the law as to admissibility of confessions[2] by rendering a confession obtained by promise or threats admissible unless the judge thinks the inducement was really calculated to cause an untrue admission of guilt.

SS. 5–8 empower courts to compel witnesses to testify to and answer incriminating questions in proceedings for breach of Acts relating to customs, the sale of intoxicants, distillation, or beer duty; but contain (s. 8) power to give certificates of indemnity in favour of witnesses who make a true and faithful discovery on such compulsory examination.

Under ss. 3, 4 not only a judge of the Supreme Court, but also a judge of a District Court or a stipendiary magistrate may by order authorize the bringing up of persons in prison as witnesses in any proceeding. Oath of the materiality of the evidence of the witness must be first made, and in civil proceedings security must be given for the expenses of bringing up the witness.

Mortgages.

The Property Law Consolidation Act, 1883, Amendment Act, 1895 (No. 11), amends the Property Law Consolidation Act, 1883 (46 Vict. No. 29), which is a colonial development of the Imperial Conveyancing and Law of Property Act, 1881 (44 & 45 Vict. c. 41).

SS. 2–4 enact that where a mortgagee is "absent" from the colony, and has left no known attorney authorized to give a receipt for the mortgage money, the Colonial Treasurer may receive the mortgage money, and his receipt releases the mortgaged property, and, on registration, is conclusive to protect persons dealing for value and without notice with the mortgagor.

S. 9 amends s. 47 of the Act of 1883 by adding to the implied covenants for title in all conveyances for valuable consideration a covenant as to the production of documents.

Native lands.

A large number of Acts (general and local) of 1895 deal with lands still or recently in the possession of the Maoris.[3] They illustrate the process of gradual absorption of such lands and extinction of native title and tenure.

(1) The Native Townships Act, 1895 (No. 12), provides for setting apart sites for native townships, and for their survey and laying out. No

[1] The section seems to be based on the decision in Makins *v.* Attorney-General of New South Wales (L. R. (1894) A. C. 57), and the Lambeth Poisoning Case (Reg. *v.* Neill Cream, 116 Cent. Crim. Ct. Sess. Pap. 1451), and adopts and extends the ruling in the latter case.

[2] As declared in Reg. *v.* Thompson (L. R. (1893) 2 Q. B. 12).

[3] See also under Rating, below, p. 77.

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site is to exceed five hundred acres, nor are two sites to be within ten miles of each other. Allotments are to be laid off and reserved for the native owners of the site, and are to include all buildings and native burial-grounds. Land not so allotted may be leased to any person on conditions as to user (ss. 14–17), and the rents accruing from the leases are to be carried to a separate account, and after paying expenses, divided among the native owners of the land comprised in the township.

Under s. 21 "all natives are to have the free use of all baths or thermal springs existing on any reserve" in a native township.

Under s. 22 the Governor in Council may prescribe the form of local government for the township.

(2) The Native Land Laws Amendment Act, 1895 (No. 52), amends, in many details (particularly with reference to alienation and registration), the Native Land Court Act, 1894 (58 Vict. No. 43), an Act which amended and consolidated the law as to the Native Land Court, which has jurisdiction to determine all matters relating to the title to, exchange, and partition of, and succession to, Maori lands within a defined area of the North Island, and to control the alienation of such land, and to settle questions arising on Maori trusts.

(3) The Native Reserves Act Amendment Act, 1895 (No. 53), imposes restrictions on the alienation of native reserve vested in the Public Trustee under the Native Reserves Act, 1882 (46 Vict. No. 52), and restricts the jurisdiction of the Native Land Court with respect to such lands. It also confirms and extends the leasing powers of the Public Trustee as to such lands.

Protection of animals.

The Animals Protection Act Amendment Act, 1895 (No. 13), amends the Animals Protection Act, 1880 (44 Vict. No. 18), which was passed for the protection of acclimatized and native game, and to forbid the importation of foxes, venomous reptiles, and birds of prey. The Act of 1895 forbids the introduction of any animal, bird, insect, or reptile into the colony without the written consent of the minister in charge of the Department of Agriculture. The master, owner, charterer, and agent of every ship are required effectually to prevent any "snake, scorpion, or other noxious reptile" from landing from the ship whether in the cargo or otherwise (s. 3). The Governor may prohibit the sale of any "imported game" or "native game" for a period in any district where the stock appears insufficient to warrant sale (s. 8).

Contractor's lien.

The Threshing-machine Owners' Lien Act, 1895 (No. 15), gives to owners or lessees of threshing-machines who contract to thresh out grain for others, a lien [1] for their charges for threshing out any cereals,

[1] The Contractors' and Workmen's Lien Act, 1892 (56 Vict. No. 25), had applied to the colony a Mechanics' Lien Law like that of most States of the United States.

pulse, or seeds of any description, and provides (s. 3) that where the crop is subject to a valid security duly registered under the Chattels Transfer Act, 1889 (53 Vict. No. 13), if notice of the lien is given to the grantee, within seven days after he realizes his security the reasonable cost of threshing becomes a charge on the proceeds of realization of the crop.

Sale of food.

(1) The Adulteration Prevention Acts Amendment Act, 1895 (No. 18), provides (Part I.), that all bread made for sale must be made up into 1 lb., 2 lb., or 4 lb. loaves, each legibly stamped by the baker with the appropriate Arabic numeral, at least one inch long. The definition of "bread" includes "fancy bread," but excludes dough, biscuits, confectionery, rolls, and twists. The baker is protected if he makes the usual and proper allowance for evaporation in baking (s. 8). The purchaser of bread is entitled to full weight, and the onus is on the baker to prove that he has given it (ss. 2, 6). Bakers must have weights and scales, and, if required, weigh the bread in the presence of the purchaser.

Part II. (ss. 9, 10), adapts to the colony ss. 25–27 of the Imperial Sale of Food and Drugs Act, 1875 (38 & 39 Vict. c. 63), with reference to the defence of written warranty by the wholesale dealer, and proceedings against him in respect thereof.

(2) The Margarine Act, 1895 (No. 27), regulates the manufacture and sale of margarine. It resembles, but with important differences and greater stringency, the Imperial Act of 1887 (50 & 51 Vict. c. 29). Margarine is defined as including all substances, whether compound or not, prepared or manufactured from any form of animal fat other than butter fat (*i.e.* the pure fat of cow's milk), or milk, or of animal, mineral, or vegetable oils, and capable of being used as a substitute for butter. No margarine may be made except under a licence granted by the Minister of Agriculture (s. 3), and annually renewable.

The Act forbids (1) mixing, colouring, staining, or powdering margarine so as to imitate butter; (2) mixing margarine with butter fat; (3) making, selling, or offering for sale as butter any margarine or other substance, which contains, or with which are mixed any animal fats, or animal, mineral, or vegetable oils, or extraneous butter fat or oil; (4) export of margarine, unless shipped and invoiced as such (s. 4). Manufacturers must distinctly and durably brand or mark all packages with the word "Margarine" (s. 5). Every seller of margarine, otherwise than in packages branded under s. 5, must deliver it to the purchaser in a wrapper on which is printed the word "Margarine." Provision is made for appointing Government inspectors to enforce

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the Act, and for utilizing officers appointed under the Dairy Industry Act, 1894 (58 Vict. No. 48).[1]

Homesteads.

The Family Homes Protection Act, 1895[1] (59 Vict. No. 20), seeks to make provision for securing homes for the people, and for preventing such homes from being mortgaged or sold for debt or otherwise.[2]

An owner of freehold or leasehold land, on which he has his home, may settle such land (not exceeding in value, with all improvements, £1500), as a family home. The value is ascertained by the Commissioner of Taxes on the application of the settlor, and the certificate of the commissioner is conclusive (s. 3). The settlement may not be made if the land is encumbered and the settlor is unable to pay all his debts without resort to such land (s. 4).

Notice of the application is to be given to the Land Registrar for the district in which it lies, and elaborate provisions are made for caveats by creditors (ss. 5–14). If no caveat is lodged, or the caveat fails, the registrar issues and registers a "Family Home Certificate" (s. 15).

The effect of registration is to settle the land—

(1) For the personal use and occupation of the settlor and his family until he dies, or all his children have attained twenty-one, or died, whichever shall last happen (ss. 17 (1), 20); and

(2) For distribution when the period for distribution arrives (s. 17 (2)).

The home can be taken compulsorily under Acts containing compulsory powers for the acquisition of land (s. 18), but the interest of the settlor and his family is to be personal, absolute, indefeasible, and unaffected by any bankruptcy assignment, judgment, order, charge, execution, dealing, matter, or thing, which, but for the Act, could directly or indirectly have affected the land (s. 17 (4)). Nor can it be alienated or dealt with by the settlor or his family, except "at the period of distribution" (s. 20), or so far as the settlor can during his lifetime or by his will regulate its occupation. In the absence of testamentary direction, power of regulation is given to the surviving spouse. SS. 22, 23 provide for the regulation of the distribution when the period arrives, leaving the settler in the main free to divide as he chooses among the family. At "the period of distribution" the home may be continued as a family home by the consent of all parties entitled in distribution (s. 27).

If the settlor, within twelve months of registration, becomes bankrupt,

[1] An Act providing for State inspection and regulation of the manufacture of butter and cheese, to insure the purity of milk, and the protection of the public from the sale of milk which has been near persons or animals suffering from infectious or contagious disease.

[2] For similar legislation, see New South Wales, p. 25; Queensland, p. 45; and South Australia, p. 38.

or makes any assignment for the benefit of his creditors, or dies insolvent without recourse to the home, the registration is rescinded by operation of law (s. 24).

Servants' registry offices.

The Servants' Registry Offices Act, 1895 (59 Vict. No. 21), forbids persons to keep or conduct a registry office for hiring servants, or charge or recover any fees for hiring of servants unless he is the holder of a licence under the Act (s. 3). The licence is granted by the inspector of factories for the district on payment of a licence fee of 10*s.* and production of a certificate of character given by a magistrate. The inspector is entitled to notice of application for a certificate, and may oppose its grant (s. 4). The licence lasts for a year.

The licence-holder must keep: (1) a book showing the names of every person who pays or is charged a fee with relation to the hiring of servants, with the date and amount of the fee; (2) the originals of all letters received by him as to the hiring of servants for one year from their receipt (s. 8).

The Governor in Council may prescribe a list of fees chargeable in respect of hiring servants, and a printed copy of this must be posted in the office (ss. 14, 15); and the licence-holder is forbidden to charge or take any higher fee, or to take any goods or chattels in payment or security for any fee (s. 16).

The licence-holder may not have any direct or indirect interest in a lodging-house for servants, nor keep or board for reward any servant or lodger (s. 17). The Act contains many subsidiary provisions as to the production of the licence and endorsement of convictions thereon (ss. 20–22).

Attachment of wages.

The Wages Attachment Act, 1895 (No. 22), prohibits the making of an order attaching or charging the wages of a workman, unless they exceed 40*s.* a week; and then only at the excess over 40*s.* The cost of attachment is not payable by the workman unless the creditor under the attachment recovers a sum equal to or greater than the expenses.[1]

Sale of goods

The Sale of Goods Act, 1895 (No. 23), is a transcript of the Imperial Sale of Goods Act, 1893 (56 & 57 Vict. c. 71), with some alterations in the order of the sections. S. 24, which repeats the Imperial s. 22 as to market overt, is qualified by a proviso that nothing in the Act shall be construed to create a market overt in New Zealand. S. 27 (25 in the Imperial Act) is also qualified by a proviso affecting the purchaser, with notice where the original seller has registered a lien or other right under the Chattels Transfer Act, 1889 (53 Vict. No. 13).

[1] In England the attachment of wages is prohibited by 33 & 34 Vict. c. 30.

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Statute law revision.

The Reprint of Statutes Act, 1895 (No. 24), makes provision for compiling an edition of the public general enactments of New Zealand.

Not more than three commissioners are to be appointed by the Governor, who are to have a secretary and such clerical assistance as they need (s. 2).

The powers and duties of the commissioners are—

(1) To prepare and arrange for publication an edition of all Public General Acts;

(2) To revise, correct, arrange, and consolidate such Acts, omitting all such enactments and parts thereof as are of a temporary or local and personal nature, or have expired, become repealed, or had their effect (spent); and

(3) To omit all formal and introductory words and all repealing enactments, and to make such alterations as are necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the existing Acts.

They are to report—

(*a*) The contradictions, omissions, and imperfections appearing in the existing Acts, and the mode in which they have dealt with them.

(*b*) The Acts which they think should be repealed wholly or in part, with their reasons and recommendations as to any new enactment which they think necessary; and

(*c*) Acts or Bills of the Imperial Parliament which, from their general interest and importance, they think should be adopted for the colony.

In their reports they are to indicate new matter in different type from that showing the existing law on completion of the revision; and on consolidation of the Acts relating to any separate branch of the law, a copy is to be sent to the Governor, who may submit the reports with the draft Acts to the Legislature, for enactment if it thinks fit (s. 4).

Three Acts deal with mines and mining companies.

Mines.

(1) The Mining Companies Act Amendment Act, 1895 (No. 25), empowers any mining company to sell, or give an option to purchase, as a going concern, the whole of the rights, privileges, and profits of the company except uncalled capital; but the power of sale is conditional on obtaining a certificate from the warden of the district in which the company's operations are carried on.

(2) The Coal Mines Act Amendment Act, 1895 (No. 26), empowers the Governor, by notice in the *Gazette*, to reserve lands comprised in a

coal-mining lease for railways or other means of transit between any coal mine and any railway or tramway constructed by the Public Works Department or by the holder of a coal-mining lease.

(3) The Mining Act Amendment Act, 1895 (No. 60), amends the Mining Act, 1891 (54 & 55 Vict. No. 33), and the Mining Companies Act, 1894 (58 Vict. No. 51), which consolidated the law of the colony as to all mines except coal mines.

The Act of 1895 provides (ss. 23–35) for the formation of colonial registers for foreign mining companies falling within s. 354 of the Mining Companies Act, 1894. Such a company, whether so authorized or not by its constitution, may provide for the registration of transfers and the issue of documents of title in respect thereto within the colony. It must have a colonial register (s. 24), and appoint a colonial attorney to register transfers. The same shares must not be entered both on the colonial and on the foreign register of the company (s. 24 (3)), and the provisions of the Act of 1894 (ss. 43–52) as to registers are applied to the colonial registers.

The Act also deals (ss. 1–10) with the extended prospecting licences (ss. 11–15), with licences to prospect by tunnelling (ss. 16–22 (34)), with forfeiture of claims for default in payment of rent or failure to use reasonable diligence in protecting and working them; and contains special enactments as to mining in rivers and river-beds (ss. 26, 27), and for mining by dredging the sea (ss. 28, 29).

Poisons.

The Poisons Importation and Carriage Act, 1895 (No. 28), regulates the importation and carriage of arsenic and cyanide of potassium, with the object of preventing these substances from getting mixed with food stuffs on ship board or in land transit.

Arsenic imported must be packed in iron water-tight drums, and cyanide either in such drums or in strong and hermetically sealed iron cases, protected by wood (s. 4). The packages must be labelled "Poison;" and all packages are to be inspected by the customs officers before removal (s. 7), and power is given to prevent the landing of any food stuff mixed with or contaminated by either poison (s. 7 (5)).

Industrial arbitration and conciliation.

The Industrial Conciliation and Arbitration Act Amendment Act, 1895 (No. 30), amends the Industrial Arbitration and Conciliation Act, 1894 (58 Vict. No. 14), which provided for the formation of industrial unions of employers or workmen, and for facilitating the settlement of industrial disputes by conciliation and arbitration. S. 2 of the Act of 1895 permits an industrial union of not less than five employers to be registered, each partner of a firm resident in New Zealand to count as one member of such union of employers. Where an industrial dispute

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involves technical questions, two experts may be named, one by each party, who are to sit as assessors and members of the board or court (s. 4); and where a dispute relates to wages, the court or the board has jurisdiction, unless the relation of employer and employed has ceased over six weeks before the dispute was first referred (s. 5). The governor is empowered (s. 6) to appoint members to vacancies in a board or court of conciliation where the full number has not been duly elected or recommended under the Act of 1894.

Corrupt and illegal practices.

The Corrupt Practices Prevention Amendment Act, 1895 (No. 31), amends the Corrupt Practices Prevention Act, 1881 (43 Vict. No. 13).

No payment, advance, or deposit, for election expenses may be made except by or through the candidate himself, and "all money provided by any person other than the candidate for any expenses incurred, whether as gift, loan, advance, or deposit, shall be paid to or on the order of the candidate, and not otherwise" (s. 3). Contravention of these rules is an illegal practice. All payments of 40*s.* or upwards are to be vouched by bill (s. 4). Claims must be sent in within thirty days and paid within sixty days after the declaration of election. Disputed claims may be sued for within ninety days after the declaration (s. 6); but the court may give leave to pay claims after expiry of the statutory period. The candidate must file with the returning officer a true return of his expenses within seventy days of the declaration, or, if absent from the colony on the polling day, within twenty-one days of his return to the colony (s. 8).

S. 12 limits the expenses of a parliamentary candidate to £200, and makes payment of any larger sum a corrupt practice.

Fencing land.

The Fencing Act, 1895 (No. 32), consolidates and amends the law as to the erection and repair of dividing and rabbit-proof fences. The scheme of the Act is to make occupiers of contiguous lands liable to contribute to the erection and repair of sufficient fences between land not already so divided. The procedure for carrying out the Act involves notice by the person seeking to erect such a fence to the contiguous occupier and decision of any objections by a magistrate. The term fence is made to include a natural or artificial watercourse, with all necessary gates, flood-gates, culverts, and channels (s. 2 and schedule A., 1). The schedule specifies a number of kinds of fences to be regarded as sufficient; but barbed wire may be forbidden in towns (s. 8), and sweet-briar and brambles are forbidden (s. 24 (2)), nor can gorse or trees be used in a live fence without the consent of the adjoining occupier (s. 24 (1)). Elaborate provisions are also made as to the erection of rabbit-proof fences and the conversion of existing fences into rabbit-proof fences (Schedule A, 2). Where a fence is destroyed

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by sudden accident, or damaged and needs immediate repair, one contiguous occupier may repair at once and recover half the cost from the other, unless the damage was caused by the default of the repairing occupier, whether by stock, or fire, or falling of a tree or otherwise (s. 33). But the Act reserves the right to recover compensation for damages to a fence by reckless or negligent use of fire.[1]

Customs, excise, and stamps.

(1) The Customs and Excise Duties Act, 1895 (No. 33), creates a new customs tariff for the colony. It contains a schedule of dutiable articles in sixteen classes, with a similarly classified scale of exemptions. Most of the duties are calculated *ad valorem* at a rate varying from 5 per cent. on manufactured metal to 40 per cent. on "apparel made by British or foreign tailors, dress, mantle or jacket-makers, to the order of residents in the colony, and intended for the individual use of such residents, whether imported by the residents themselves or through an importing firm." In addition to any duty chargeable by law on any goods imported, a further duty of 20 per cent. *ad valorem* is charged when the goods are prison-made.

(2) The Stamp Act Amendment Act, 1895 (No. 67), provides that "whenever there is no possible means of discovering what is the maximum value of the consideration dealt with under a lease granted at a royalty, then the duty payable in respect of such lease shall be a fixed sum of £5." It also imposes (s. 5) a licence fee on persons acting in the colony as agents for effecting abroad accident, fidelity guarantee, live-stock, or plate-glass insurances. But the fee levied is not to exceed the sum which would be payable if the company were domiciled in the colony.[2]

An elaborate definition of deed of gift for fiscal purposes is given by s. 6.

Water supply.

The Water Supply Act Amendment Act, 1895 (No. 35), permits the supply of water by Water Boards outside their own districts (s. 2), and authorizes payment of the expenses of the chairman and members of a Water Board when travelling to and from committees, or on the business of the board (s. 3).

Unclassified societies.

The Unclassified Societies Registration Act, 1895 (No. 36), provides for the registration of unclassified societies, *i.e.* societies of not less than fifteen persons associated for any lawful purpose (not being for pecuniary gain), and not registered or incorporated under any other enactment. On filing a statutory declaration made in the prescribed form by the chairman such societies are to be registered by the Registrar of Friendly

[1] See Black *v.* Christ Church Finance Co., Ltd. (1894), A. C. 48.

[2] Under s. 7 of the Stamp Act, 1885 (49 Vict. No. 40), the licence fee was imposed as to fire, life, and marine insurance.

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Societies, and a certificate of incorporation issued.[1] Power is given to incorporated societies to make rules (s. 10), and resignation or expulsion under the rules does not free the outgoing member from liability to the corporation (s. 12). It would appear from the form of the schedules to the Act that it is meant to include cricket and football clubs, but the provision (in s. 8) against members making pecuniary profit excludes professional clubs.

Foreign insurance companies.

The Foreign Insurance Companies Deposits Amendment Act, 1895 (No. 37), amends the Foreign Insurance Companies Deposits Act, 1894 (58 Vict. No. 29), under which (ss. 4–7) foreign fire and marine insurance companies, before setting up business in New Zealand, were required to obtain a certificate from the Public Trustee authorizing them to do so. Under s. 2 of the Act of 1895, the Public Trustee must grant the certificate unless satisfied that the company is not financially sound. Provision is also made (s. 3) that the deposits required from life and accident companies under the Act of 1894 are to bear interest payable by the Public Trustee at such rate as the Governor in Council determines. And the requirements of the Life Assurance Companies Act, 1893 (37 Vict. No. 18), as to the registration of policies and contracts, are repealed (s. 4).

Diseases, etc., of stock.

The Stock Act Amendment Act, 1895 (No. 38), amends the Stock Act, 1893 (57 Vict. No. 51), which regulated the importation, removal, and branding of stock, *i.e.* "horses, asses, mules, cattle, sheep, goats, deer, llamas, antelopes, buffaloes, and other ruminants, dogs, and swine;" and also made provision against the introduction and spread of diseases affecting stock.

The Act of 1895 requires owners and slaughterers of sheep to make an annual return of all sheep owned or slaughtered by them. Owners of long wool or cross-bred sheep are required under penalty to dip every sheep they have within a period named (s. 6). The Act also includes a new definition of sheep "brands" (s. 7) including wool-marks, ear-marks, tattoo-marks, fire-marks, and the fixing of a metal clip to the animal's ear; a new table of infectious and contagious diseases affecting stock (s. 8); and a scale of compensation to be paid for destruction of stock supposed to be affected with certain of such diseases (s. 5).

Fishery.

The Sea Fisheries Act Amendment Act, 1895 (No. 39), amends the Sea Fisheries Act, 1894 (58 Vict. No. 56), by giving certain officers power to enter and search for fish and oysters supposed to be illegally taken (s. 2). It also imposes penalties on persons possessing, exposing, or selling oysters during the close season (s. 3 (2)), and amends s. 21 of the Act of 1894, with respect to the limit of areas for exclusive

[1] See also 59 Vict. No. 48, below, p. 80.

licences for taking oysters from natural beds. The licensed areas are to be sold by public auction. *NEW ZEALAND.*

Rating.

The Rating Act Amendment Act, 1895 (No. 40), renders rateable certain native lands previously exempt from rating,[1] and vested in the Public Trustee. Where such land is unoccupied, or occupied only by natives, only half rates and no special rates are payable. Where it is occupied by persons other than natives, full rates are payable. The Public Trustee is treated as the owner, and is liable in his representative capacity to the extent of his available funds.

Dwelling houses or other buildings, if vacant or unoccupied (continuously or not) for six months in any rating year, are rendered subject only to half rates, if the prescribed method for getting abatement is followed (s. 5).

Compulsory taking of land.

The Land for Settlements Amendment Act, 1895 (No. 41), amends the Land for Settlements Act, 1894 (58 Vict. No. 37). The provisions of that Act are too elaborate for recapitulation; but their main object was to enable the Crown, compulsorily or by agreement, to acquire suitable lands for regrant to settlers on leases in perpetuity or as small grazing-runs. The Act of 1895 (s. 2), empowers the Governor to appoint a salaried land purchase inspector, who is to be chairman of the board of Land Purchase Commissioners (s. 3), and empowers the minister to appoint as a commissioner one of the members of the land board for the district in which lies the land proposed for purchase.

Where land acquired under the Act of 1894 comprises a homestead, the owner may obtain a lease in perpetuity of the homestead and surrounding land, not exceeding 640 acres, on complying with certain conditions as to application, approval, cultivation, and at a rent not exceeding 5 per cent. on the capital value of the land, buildings, and improvements (ss. 4–8).

Where land is taken compulsorily from partners in farming, each partner, whose undivided share exceeds the prescribed maximum, is entitled to retain any area not exceeding that maximum, as if his share had been owned in severalty (s. 9).

Fresh conditions are imposed (s. 10), in addition to those of s. 19 of 1894, prohibiting the occupier or owner, when he retains possession of the holding (which he may do for nine months from the date when his lands

[1] The colonial law as to rating was consolidated in 1894 by 58 Vict. No. 24. Valuation for rating purposes in the colony may be made either on the annual value or on the capital value of the property rated at the option of the local authority (s. 4). Only land, tenements, and hereditaments are rateable. The exemptions are numerous, and include churches, cemeteries, public schools, universities and colleges, asylums, hospitals, lighthouses, charitable institutions, unoccupied Crown lands, and much native land (s. 2).

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are taken), from (1) assigning, subletting, or parting with the possession of the land; (2) agisting stock thereon; or (3) ploughing any part which is in grass or taking "any crop or produce from any part thereof."

Loans to settlers.

The Government Advances to Settlers Act, 1895 (No. 42), amends the Government Advances to Settlers Act, 1894 (58 Vict. No. 38),[1] which created a "Government advance to settlers office and board" (ss. 1–25); and a debenture fund to be raised by loan at a rate not exceeding £1,500,000 per annum, on debentures secured on the Colonial Consolidated Fund (ss. 26–39), and directed that the fund should be employed in making advances on mortgage on the security of freehold and leasehold lands, except suburban lands, and certain native lands (ss. 25, 40–45), repayable in thirty-six and a half years with interest at 5 per cent. by seventy-three half-yearly instalments (s. 41). The Act of 1895 alters the constitution of the general board (s. 2) by empowering the superintendent to sue and be sued in his official style and capacity. This officer is an official chairman of the board, and is the official mortgagee under the Acts.

S. 5 of the Act of 1895 defines suburban lands as meaning "lands situate in the vicinity of a town or borough, and held or occupied for residential or manufacturing purposes," and as not including "land held or occupied for farming, dairying, or market-gardening purposes."

S. 6 permits advances on first mortgage on classes of land not included in the Act of 1894 (s. 41) including certain educational and other reserves held on "perpetual lease or lease in perpetuity," Crown lands held by licence on the deferred payment system under Part III. of the Land Act, 1885 (49 Vict. No. 56), and land held under leases from a "leasing authority" (as defined by the Public Bodies' Powers Act, 1887 (51 Vict. No. 34)), which provide "for the payment by the incoming tenant of valuation for improvements made upon the land, whether by the lessee named in the lease or any former lessee or tenant."

Agricultural and pastoral statistics.

The Agricultural and Pastoral Statistics Act, 1895 (No. 43), directs the collection of statistics as to the agricultural and pastoral industries of the colony. An annual account is to be taken of the land occupied for agricultural or pastoral purposes, with the live-stock thereon (5–2). The details to be given are described by a schedule which deals with the tenure of the land, the extent of land under particular crops, or in plantation of forest trees, and protected by fencing proof or net-proof against rabbits.

[1] The preamble of the Act of 1894 runs: "Whereas by reason of the high rates of interest charged on mortgage of land, and the heavy incidental expenses connected therewith, settlers are heavily burdened, and the progress of the colony is much retarded, and whereas it is expedient that the Government should afford such relief on the premises as is consistent with the public safety."

Pastoral tenant's relief.

The Pastoral Tenants Relief Act, 1895 (No. 44), gives relief (1) by remission or refund of rent, (2) extension of lease, or (3) remission or refund of sheep-rate, to pastoral tenants of the Crown who had suffered exceptional loss, and been crippled in their resources by loss of stock through the severity of the winter in high-lying districts of the colony, and heavy snow fall. The relief, so far as relates to sheep-rate, is also extended to other persons engaged in pastoral pursuits who have suffered in the same way as Crown tenants (s. 16).

Intoxicating liquors.

The Alcoholic Liquors Sale Control Act Amendment Act, 1895 (No. 45), amends the Alcoholic Liquors Sale Control Act, 1893 (57 Vict. No. 34). which established a system for the control by local option of the number of liquor licences.[1]

The Act of 1895 (ss. 1–12) supersedes and repeals the local option provisions of the Act of 1894 (ss. 15–20), and as the law now stands no licence of any description may be granted or renewed unless the electors have previously determined—

(1) Whether the number of existing licences is to continue;

(2) Whether it is to be reduced; or

(3) Whether no licence is to be granted.

The determination is ascertained by a poll taken on the day fixed for the electoral poll at the general election for the return of a member for the district, *i.e.* as a rule biennially, but with provisions in case Parliament is dissolved before it has been two years in existence.

The polling-day is made a public half-holiday, and intoxicants may not be sold between twelve and seven of that day (s. 10).

A poll is invalid unless half the registered electors vote. The voting is not cumulative; but each elector may vote on two of the three questions submitted, which enables him by answering (1) and (2) affirmatively to contradict himself absolutely. In the case of an absolute affirmative majority to (1) or (2) it is deemed carried. In the case of a three-fifths majority in favour of (3) it is deemed carried. If the prescribed majority is not obtained on any, the licensed state of the district remains where it was. Where reduction is carried the mode of giving effect to the poll is prescribed (s. 8 (2)).

Restoration of licences may be effected by a poll conducted in a similar way in districts in which there are no existing publicans'

[1] It constituted the electoral districts of the colony as licencing districts (s. 3), and provided for the creation of elective licensing committees from the duly registered electors resident in the district (ss. 6–11). No increase of licences was allowed until the next census (s. 14), except where the population of an area had suddenly increased (*e.g.* in a mining district), not exceeding one for seven hundred of population (s. 5).

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licences at the date fixed for licensing polls (s. 12). Such poll is held automatically without need of a demand by the inhabitants.

Public works and State railways.

The Public Works[1] and Government Railways Acts Amendment Act, 1895 (No. 47), amends the Public Works Act, 1894,[1] and the Government Railways Act, 1894 (58 Vict. No. 35). It empowers the Minister of Works and certain local authorities to make bye-laws as to the maximum width of tires of wheels used on passenger vehicles (s. 2 (1)).[1] And under s. 3 penalties are imposed on consigners by railway who understate the weight or quantity of goods sent by train (s. 3).

Public teachers.

The Public School Teachers Incorporation and Court of Appeal Act, 1805 (No. 48), provides for the incorporation of societies of public school teachers. A society may consist of any number of school teachers, not less than ten, resident in the same education district, and associated for any lawful purpose connected with their profession not being purposes of gain (s. 4). The societies are to be registered on their application by the Inspector-General of Schools (s. 4), with the consent of the Minister of Education. On registration a society receives a certificate of incorporation and acquires powers as to making rules for its government.

The Act also constitutes (ss. 13–28) a teachers' Court of Appeal to hear and determine appeals by teachers against dismissal or suspension (s. 13). The court is to consist of a stipendiary magistrate for the district in which the teacher was employed on dismissal, a person named by a teachers' society situate in the district, and a person named by the Education Board which dismissed the teacher. The appellant teacher must appeal within twenty-eight days, and give notice to the Minister of Education, which must state the grounds of appeal and contain a memorandum by a teachers' society nominating a member of the court, and undertaking to pay all costs awarded against the appellant. The minister, on receipt of the notice, appoints the magistrate to sit. Various provisions are made as to the quorum and procedure

[1] 58 Vict. No. 42 forms a complete code as to taking land for public works, including works by the Crown or local authorities, railways, lunatic asylums, public schools, electric telegraphs, fortifications, rifle ranges, and lighthouses (s. 2). Part II. deals with taking lands. Part III. with compensation, and a compensation court is constituted (s. 49). In considering the value of the land the court is to take into account, by way of deduction from the amount of compensation, any increase in the value of untaken lands in which the claimant is interested likely to be caused by the execution of the works (s. 68). Part VI. forms the Colonial Highway Act. In New Zealand roads really are the Queen's highway, the soil being vested in her Majesty (s. 101). Part VII. deals with the construction and maintenance of railways. Part VIII. with the regulation of railways and tramways. Part IX. with defence works. Part X. with drainage by public bodies. Part XI. with water supply in mining districts.

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of the court. Their written decision is final, and if in favour of the teacher, he is entitled (1) to reinstatement in the school where he was suspended, or appointment at the option of the Education Board to a similar position in another school; or (2) to such compensation for loss of salary as the court directs, not exceeding the salary which he would have received from the date of suspension till that of reinstatement, or appointment to a new school (s. 25).

Technical and manual instruction.

The Manual and Technical Elementary Instruction Act, 1895 (No. 49), appropriates (s. 6) £2000 annually to technical and manual instruction. Manual instruction is defined as "instruction in the practical handling of tools, and in the actual construction of models, and other articles in wood, metal, clay, or other material."[1]

Technical instruction is defined as "instruction in the principles of science and art applicable to industries, and in the application of special branches of science and art to specific industries and employments. It does not exclude such instruction in the use of tools and appliances as is necessary to the full illustration of the application of any branch of science or art to any specific industry or employment."

Education Boards are empowered (s. 3) to order that manual instruction may be given as part of a public school course, or to authorize any teacher, or a person specially appointed, to give manual instruction in extra school hours, *i.e.* hours not included in the ordinary school time (s. 4). If the extra teaching occupies at least two hours a week for ten weeks in every school quarter, and is given by a qualified teacher, the minister must order payment to the teacher at the rate of *2s. 6d.* in town, and *3s. 6d.* in country districts, for every unit of average attendance at such instruction during the quarter.

Education Boards may also establish classes for technical instruction (s. 5) entirely apart from the public school course, and in any place more than five miles from a place where a class is so established by a board, such class may be established by a society or committee, or other body of managers, or any instructor. Fees may be charged for technical instruction. Payment is made by the Minister of Education for each class so established and taught by a competent person, at a scale fixed in the Act (s. 5). Provision is made for inspection and advice and report by the inspector as to the course and method of instruction in certain subjects (s. 7).

Merchant shipping.

The Shipping and Seamen's Act Amendment Act, 1895 (No. 51),

[1] This differs considerably from that in the Technical Instruction Act, 1889 (52 & 53 Vict. c. 76).

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amends the Shipping and Seamen's Act, 1877 (41 Vict. No. 54),[1] and the amending Act of 1894 (58 Vict. No. 62).

It requires masters of intercolonial and home-trade ships to exercise their crew in boat drill at prescribed intervals (s. 2). S. 3 deals with the issue of certificates of competency for engineers plying within restricted limits, styled "river engineers' certificates" and "marine engine-drivers' certificates." Ships built wholly or partly of iron must have her compasses adjusted before she puts to sea from any port in the colony. Adjusters may be licensed, and vessels plying within restricted limits may be exempted (s. 4). The minister may fix a scale for deductions from wages, under s. 20 of the Act of 1877, not exceeding those in the third schedule to that Act (s. 5).

Lunatic's estates.

The Lunatics Act Amendment Act, 1895 (No. 56), which amends Acts of 1882 (46 Vict. No. 34) and 1891 (54 & 55 Vict. No. 22), confers upon the Public Trustee very large powers as to the administration of the estates of lunatics of which he is appointed committee, or of which there is no committee appointed by the court. Where the net amount of the estate, after deducting debts or claims allowed by the Public Trustee, does not exceed £500 the Public Trustee is given full powers of management, including sale, leasing, etc., without the necessity of applying to the court. After satisfying the liabilities of the lunatic and the expenses of administration, he may apply the balance for the maintenance of the lunatic or his family (including the education or advancement of children or issue). Suitable maintenance of the lunatic and family is a first charge on the estate after payment of debts.

In the case of larger estates the trustee must go to the court except as to sale, lease, exchange, or borrowing. He does so by summons at chambers or upon a statement of facts and proposals (s. 4).

In the case of death of a lunatic who has no committee, or over whose estate the Public Trustee is committee, the trustee is to act as administrator until probate or administration is granted (s. 10).

All capital moneys received by the Public Trustee out of the estate of a lunatic fall into the common fund of the Public Trust Office, and are entitled to the guarantee afforded by that fund (s. 6).

No person except the Public Trustee may be appointed committee without notice to the Public Trustee (s. 9), or without giving security to the satisfaction of the Supreme Court (s. 12). A committee must render to the Public Trustee a statement as to the lunatic's property.

The Public Trustee may be removed by the Supreme Court from the position of committee on the application of any person interested

[1] This Act is the colonial version of the Merchant Shipping Acts.

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(s. 17); but while he remains committee a certificate under his hand and seal is sufficient evidence of his appointment and powers.

Local authorities loans.

The Local Authorities Loans Conversion Act, 1895 (No. 59), authorizes local authorities to convert and consolidate their loans.

The local authority must first get what is termed a "special order,"[1] under the Act applying to the authority, but without the need of resorting to a poll of the ratepayers (s. 18). Before conversion, a sinking fund must be established, and for its purposes a permanent appropriation must be made out of the local revenue of such a sum as the Public Trustee deems necessary. The sum appropriated must be paid to the Public Trustee annually during the currency of the loan, or until he is satisfied that the accumulations of sinking fund will suffice to redeem at maturity. The sinking fund is invested in such securities sanctioned by the Public Trust Office Act, 1894, as will yield the highest interest (s. 4).

The local authorities may issue debentures in sums not less than £20 (s. 11) to the amount of the outstanding loans; and where there is no sinking fund to the loan, for such further amount by way of premium or compensation as is necessary to effect the conversion; but the holder of an outstanding debenture cannot be compelled to accept payment before the due date (s. 7). Pending conversion, the local authority may borrow for the purpose of effecting it. The rates, revenue, or other securities for any loan converted (except so much of a sinking fund as is set free by conversion), become security for the conversion debentures (s. 15). The debentures are to bear interest at a rate not exceeding 4½ per cent., and have a currency not exceeding fifty years, and are not to be sold at a price which will produce more than 4½ per cent. to the purchaser (ss. 16, 17). Principal and interest to be payable at a place within or without the colony, and at a time to be named in the debentures and coupons, and the debentures are to be transferable by delivery (s. 18).

The public revenues of the colony are not in any way responsible for their payment (s. 21).

Agents may be appointed outside the colony for all negotiations necessary to effect the conversion (ss. 8, 9), which may be affected where desired by exchange of conversion debentures for the outstanding debentures to be converted (s. 10).[2]

Crown lands.

The Land Act Amendments Act, 1895 (No. 58), amends in many details the Land Act, 1892 (56 Vict. No. 37). Lessees or licensees

[1] Compare Burgh Police (Scotland) Act, 1892 (55 & 56 Vict. c. 55), s. 306.

[2] A local Act (59 Vict. No. 15, local) makes similar provision for the conversion of the loans of the city of Dunedis.

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are permitted with certain assents to sub-divide or transfer their holdings (s. 12). The Act also increases the area allowed without competition to village settlement selections[1] (s. 13).

Power is also given to allow the grant of Crown leases for twenty-one years for industrial, rescue, or reformatory homes (s. 14).

Shop hours regulation.

The Shops and Shop Assistants Act Amendment Act, 1895 (No. 59), amends 58 Vict. No. 32, which contains an elaborate series of regulations limiting the hours of business in shops, and the closing time in shops, in the interests of shop assistants. Save for the sale of harvesting machinery, all shops in urban districts must close at one p.m. on one working-day in every week, except chemists' shops, railway bookstalls, and the shops of certain dealers in perishable food or refreshments (ss. 6 and 8). The closing day fixed by the local authority under the Act of 1894 may be altered (s. 3), and closing on any public holiday or half-holiday is treated as a compliance with the closing law for that week (s. 7). Where the general closing day for a district is not Saturday, banks and offices, which under the Act of 1894 must close at one p.m. on Saturdays, may substitute the general closing day for Saturday on giving notice to the Factory Inspector (s. 4). Persons who own and conduct shops with the assistance of members of their family under eighteen years of age, may by notice select a closing day other than that prescribed by the Act (s. 5).

And on requisition from a three-fifths majority of shopkeepers in a city or borough the minister may by notice in the *Gazette* direct the closing of all shops there at nine or ten on Saturday nights (s. 17).

Public trust office.

The Public Trust Office Consolidation Act Amendment Act, 1895 (No. 61), amends 58 Vict. No. 50, which consolidated the law as to the management of that office, and the powers, duties, and liabilities of the Public Trustee as to the administration of estates and trusts placed in the office. Under s. 2 of the Act of 1895, the Public Trustee is released in the case of sales, leases, etc., of realty of not greater value than £500, from the necessity of the sanction of the court under s. 27 of the Act of 1894.

Transfer of chattels.

The Chattels Transfer Act Amendment Act, 1895 (No. 64), amends the Chattels Transfer Act, 1889 (53 Vict. No. 13), by extending the term "chattels" so as to include "book and other debts," with a corresponding limitation of "choses in action" in s. 2 of the Act of 1889. Book and other debts are deemed to be situate in the place where the

[1] SS. 168–171 of the Act of 1892 provide for the creation of village settlements for Europeans or for Maoris and half-castes. Each settler can get a village allotment of one acre and a village homestead not over one hundred acres, but the Act is not in any way communistic.

grantor longest resided or carried on business during the six months before granting the instrument dealing with them. Each debt is to be dealt with as a separate chattel and specified in the schedule (s. 4).

S. 5 makes further provision as to the place of registration. When a conditional bill of sale has been given over chattels, the mortgagor's interest may be sold without a levy by the sheriff or other officer charged with execution of a judgment against the chattels of the mortgagor. On such sale the purchaser may take possession and hold, subject to the rights of the bill of sale holder, who, on selling under his security, must account for the surplus proceeds to the purchaser (s. 6).

Abbatoirs and slaughter-houses.

The Abattoirs and Slaughter-houses Act Amendment Act, 1895 (No. 66), amends the Abattoirs and Slaughter-houses Act, 1894 (58 Vict. No. 30), which authorized the erection of abattoirs by local authorities and prohibited the slaughter of cattle within half a mile of any borough. The amendments effected by the Act of 1895 are of details only, except the prohibition (s. 5) on permitting or suffering drainage to flow from an abattoir or licensed slaughter-house into any stream which runs through a borough.

Custody of public securities.

The Public Securities Act, 1895 (No. 68), makes further provision for the safe custody of the securities belonging to certain public offices and departments. The securities for each office are to be kept separately and held under three keys by three custodians (s. 2 (1) (2)) and securities of an office are to be kept and used solely for the purposes of that office. Special provisions are made for the transmission of securities to or from London, and for authorizing the custodians there in the colony to part with securities for the purposes specified upon an order of the Government Council (ss. 3, 4).

Public investments.

The Public Revenues Act Amendment Act, 1895 (No. 69), prescribes the procedure for the issue of public moneys for investment in securities authorized by law. The Colonial Treasurer, in the case of the Treasury, and in other cases the permanent head of the office or department, on whose behalf the investment is to be made, sends a written requisition to the Audit Office, specifying the amount required and the securities in which it is to be invested. That officer on being satisfied that the money is available and the investment authorized, directs the issue of the money, and the securities for the investment are to be deposited with the proper custodians.

Income tax and land tax.

(1) The Land and Income Tax Assessment Acts Amendment Act, 1895 (No. 70),[1] substitutes for income tax on non-resident agents a

[1] The assessment of land and income tax is governed by a series of Acts beginning with the Land and Income Tax Assessment Act, 1891 (54 Vict. No. 18), amended in 1892 (55 Vict. No. 54), 1893 (56 Vict. No. 33), 1894 (58 Vict. No. 65)

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licence duty not exceeding £50 in lieu of income tax (s. 5); and imposes half the ordinary land tax on native land when occupied by any person other than a Maori (ss. 7–10). To the exemptions from taxation is added (s. 6) all land owned and mortgages held by or on behalf of a religious body, where the proceeds of the land or mortgages are devoted to the support of aged or infirm ministers or of widows and orphan children of ministers.

(2) Under the Land Tax and Income Tax Act, 1895 (No. 71), the land-tax for 1895–96 on land and mortgages is—

(*a*) 1*d.* in the £, ordinary land tax.

(*b*) The graduated tax set out in Schedule B of the Act of 1891 as amended in 1893.

The income-tax is—

(*a*) 1*s.* in the £ on income of companies and persons engaged in shipping, and on agents under s. 2 of Schedule C or s. 19 of the Act of 1892; and

(*b*) On persons not included in (*a*), 6*d.* in the £ up to £1000; 1*s.* in the £ on income exceeding £1000 on the excess over £1000.

Customs duties reciprocity.

An Imperial Act, The Australian Colonies Duties Act, 1895 (58 & 59 Vict. c. 3) repealed the provisoes to s. 27 of the Australian Constitution Acts, 1850 (13 & 14 Vict. c. 59) and to s. 53 of the Australian Colonies Duties Act 1873 (36 & 37 Vict. c. 22), which prohibited the imposition of differential duties on the same article when imported from different countries. Before the passing of this Act an agreement had been made between agents for New Zealand and South Australia for admission, duty free, or at a low duty, of certain products of one colony into the other. This agreement was confirmed in New Zealand with some modification by the Customs Duties Reciprocity Act, 1895[1] (No. 74), and with the result that New Zealand barley, oats, horses, and hops are to be admitted, duty free, into South Australia, while New Zealand is to admit South Australian olive oil, salt

and 1895. The assessment of land is made on the capital value, subject to a right to deduct improvements up to £3000 and the amount of any mortgage due and owing (1891, Schedule A). Where the assessed value after deductions does not exceed £1500, a further deduction of £500 is made. The Act of 1891, as amended by that of 1893 (No. 33), contains a provision imposing in addition to the ordinary land tax a graduated tax, beginning at ⅛th of 1*d.* in the £ on lands over £5000 up to £10,000 in value, and rising to 2*d.* in the £ on lands worth over £210,000. Leasehold interests are taxable, and mortgages held by any person or company (except a banking company and certain other specified bodies) are taxable to the ordinary but not to the graduated land tax as if the mortgage were land (1891, Schedule A (2)).

[1] Reserved for the signification of her Majesty's pleasure.

and dried fruits duty free, and South Australian wine at a duty of 2*s.* 6*d.* a gallon. Part II. of the Act authorizes the Colonial Treasurer to enter into similar reciprocity agreements with other Australasian colonies, which are subject to ratification by the General Assembly and approval by the Governor, or by her Majesty, if the Governor, having regard to the nature of the agreement and her Majesty's treaty obligations with foreign powers, thinks fit to reserve them for the signification of her Majesty's pleasure.

8. FIJI.

[*Contributed by Sir Courtenay Ilbert.*]

Ordinances passed, 19.

Customs. Ord. No. 1 amends the customs law, especially with reference to the machinery for the collection of custom dues.

Immigrants. No. 3 relates to the introduction of imbecile, helpless, and other persons into the colony. If the collector of customs certifies that any passenger has arrived in the colony on board any ship, being lunatic, idiot, deaf, dumb, blind, or infirm, and likely in his opinion to become a charge on the Colonial Government, the collector is to require the owner, charterer, or master of the ship to execute a bond in a sum of £100 for every such passenger. This bond is to serve as a security for the maintenance and support of the passenger during the next five years.

Liquor. No. 4 empowers any magistrate on the application of any person not included within the meaning of the expression "native or half-caste," or on the application of any relative of any such person, or on the application of the police, and on proof that any such person is of confirmed intemperate habit, to prohibit by order any person to have liquor in his possession or to drink any liquor. There is a penalty for supplying liquor to any "prohibited person."

Natives. No. 5 extends the "native regulations" to the aboriginal Pacific islanders and their descendants in certain cases. Any person being a Melanesian, Micronesian, or Polynesian, or the descendant of such, is, as long as he resides in a native community, to be deemed a domiciled native and subject to the regulations of the native regulation board. He can only sever his connection with the native community by personally notifying to the bouli of the district his intention to do so and leaving the district forthwith.

No. 7 imposes a penalty on any native who enters any town or enters the premises of any European in any part of the colony with

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blackened or painted face, or, except with the permission of the police, carries any club, spear, or other weapon. The same Ordinance empowers the Governor to appoint headmen over native communities, and requires every native, not being in the service of the Government or of a private employer, to register his name, address, and employment, if he comes to reside in any town.

No. 18 qualifies the restrictions in the Native Dealings Ordinance, 1891, by enabling any native or party of natives to enter into any contract with any non-native party in respect of the depasturing of cattle on native lands or the cultivation and sale of produce. But the contract must be approved by the Governor in Council, and registered with the magistrate of the district in which it is to be performed.

The Rotuma Native Dealings Ordinance, 1895 (No. 19), regulates contracts and dealings with natives residing on the island of Rotuma. Every contract with a native of Rotuma must be consistent with the regulations of the Rotuma Regulation Board. If the consideration is the payment of money or the delivery of goods to an extent not exceeding £5 or its value, the money or goods must be paid or delivered at the time of the contract. In other cases the nature of the contract must be registered by the resident commissioner. He must not register—

(1) If it appears that the contract is not to be fully performed on both sides within a year;

(2) If the terms are not stated with sufficient clearness;

(3) If he has reason to suppose that the carrying out of the contract by the native party will involve the exercise by that party of any undue authority over native persons, or will induce or probably involve the breach of any regulation;

(4) If in the opinion of the commissioner the contract is contrary to equity or sound public policy.

Protection of animals.

No. 6 was passed with the view of encouraging the importation and breeding of game not indigenous to the colony, and preventing the destruction of game and wild birds during the breeding season. It imposes a penalty for killing any native game or wild birds during the close season between the 30th of September and 1st of March, except that any person may take or destroy a hawk or a parrot when he finds it in or over his garden, plantation, or premises. The Governor may, however, grant a permission to collect specimens of natural history. There is a penalty for destroying at any time of the year "imported game," which is defined to include, amongst other things, magpies, larks, starlings, thrushes, blackbirds, and their eggs.

Provision is made for setting apart any sheet of water, island, or enclosed land, as a preserve for wild animals. *FIJI.*

Under Ord. No. 8 no person is to print or publish any newspaper until he has registered an affidavit showing who are the proprietors and the intended printer and publisher of the newspaper, and what is the intended place of printing. **Newspapers.**

No. 9 regulates the manufacture and sale of bread, and imposes penalties on adulteration. All bread is to be made of pure and sound flour of wheat, barley, rye, oats, buck-wheat, Indian corn, peas, beans, rice, potatoes, or yams, or any of them, mixed with common salt, pure water, eggs, milk, barm, leaven, potato, or other yeast, but with no other ingredient. All bread is to be "well made." Different classes of bread are to bear special stamps. All bread is to be sold by weight and not otherwise, and is to be made in loaves of 1 lb., 2 lbs., or 4 lbs., as the seller thinks fit. Bakers are to keep weights, and are to weigh on request. There are penalties on adulteration, and powers to search bakers' shops and to seize adulterated articles. **Bread.**

No. 13 declares the Real Property Limitation Act, 1874 (37 & 38 Vict. c. 57), to be in force within the colony. **Limitation.**

No. 14 copies the English Uniforms Act. **Uniforms.**

No. 17 requires every person practising as a solicitor to obtain from the registrar of the Supreme Court in the month of January and July in each year, a certificate stamped with a duty of £5. **Solicitors.**

9. WESTERN PACIFIC.

[*Contributed by Sir Courtenay Ilbert.*]

The Queen's Regulation made by the High Commissioner for the Western Pacific, to restrain the rule and use of arms and ammunition in Samoa, may be interesting to the readers of Mr. R. L. Stevenson's Vailima Letters. It imposes penalties on British subjects supplying arms to Samoans or other Pacific islanders resident in Samoa, and enables the President of the Municipal Council of Apia to call for a statement of the arms in the possession of any British subject, and, if necessary, to issue a search warrant. **Arms.**

VI. SOUTH AFRICA.

1. CAPE OF GOOD HOPE.

[*Contributed by Sir Courtenay Ilbert.*]

Acts passed, 43.[1]

Witchcraft. The Witchcraft Suppression Act, 1895 (No. 2), imposes a penalty on whoever—

(*a*) Imputes to any person the use of non-natural means in causing any disease in any person or animal, or in causing any injury to any person or property, *i.e.* names or indicates any other person as being a wizard or witch;

(*b*) Having so named or indicated any person, is proved to be by habit or repute a witch doctor or witch finder;

(*c*) Employs or solicits any witch doctor or witch finder to name or indicate any person as a wizard or witch;

(*d*) Professes a knowledge of so-called witchcraft, or of the use of charms and divinations, or undertakes to advise any person applying to him how to bewitch or injure any other person or their property, including animals;

(*e*) On the advice of a witch doctor or witch finder, or in the exercise of any pretended knowledge or witchcraft, or of the use of charms, uses or causes to be put into operation such means or processes as he may have been advised, or may believe to be calculated to injure person or property.

Money received as payment or reward for witchcraft is to be deemed to have been obtained by false pretences.

Death duties. The Succession Duty Act Amendment Act, 1895 (No. 4), exempts from colonial succession duty property situate in England.

Extradition. The Extradition Transit Act, 1895 (No. 6), provides for the transit through the colony under warrant of extradited offenders.

Husband and wife. The Deserted Wives and Children Protection Act, 1895 (No. 7), imposes penalties on any person who neglects to provide for his family, and enables magistrates to make maintenance orders in the case of a husband deserting his wife.

Second-hand goods. The Second-Hand Goods Act, 1895 (No. 10), regulates the business

[1] Some of these would be treated in England as local.

of dealers in second-hand goods. Every such dealer is to keep a book containing entries of goods received and disposed of by him, and is to produce to the police on request this book and any goods in his possession. On receiving information of any articles having been stolen, he is to notify the next police station of any goods in his possession answering to the description of or similar to the stolen goods. He is not to keep a smelting-pot on his premises. Pawnbrokers are to be deemed dealers in second-hand goods. *CAPE OF GOOD HOPE.*

The Post-office Act Amendment Act, 1895 (No. 17), provides, amongst other things, for the redirection of letters free of charge. **Post-office.**

The Copyright Protection and Books Registration Act, 1895 (No. 18), puts an end to the Order in Council of March 10, 1855, under which foreign reprints might be admitted into the colony. There is a prohibition on the importation of any books of which the copyright is registered in the colony, and which have been notified to the officers of customs by the registered proprietor of the copyright. **Copyright.**

Under the Lord's Day Observance Act, 1895 (No. 19), no place of public amusement or entertainment may on the Lord's Day be open to the public for the purpose of any performance or exhibition, theatrical, musical, vocal, pictorial, and the like, whether there is or is not any admission fee; and any such performance or exhibition, or any performance or exhibition at any show, menagerie, circus, or the like, is not to be lawful on the Lord's Day in any public place. But this prohibition is qualified by a proviso that a local authority may allow any such place to be opened or used without fee for the purpose of a musical or vocal or musical and vocal performance, if it is not of an indecent character, or calculated to bring ridicule, contempt, or disrespect upon religion or morality. **Sunday.**

The Destitute Children Relief Act, 1895 (No. 24), requires clergymen and justices of the peace to report cases of destitute children to the resident magistrate, who in his turn reports to the Colonial Secretary. The Secretary, on receipt of a report with respect to a destitute child, issues an order authorizing the magistrate to take charge, control, and custody of the child, and to commit the child either to such suitable institution as may be approved of by him, or to some public undenominational school named in the order. The magistrate may make an order requiring the parents or guardians of the child to pay the whole or any part of the expenses of his maintenance. There are provisions like those in the English Industrial Schools Acts for securing the good conduct of children admitted to the schools under the Act, for preventing their escape, and for their apprenticeship at the expiration of their term of detention. **Destitute children.**

CAPE OF GOOD HOPE.

A destitute child is defined to mean any child of European parentage who—

(*a*) Is found habitually begging or being in any public place for the purpose of begging;

(*b*) Is found wandering and not having any home or settled place of abode, or proper guardianship, or possible means of subsistence;

(*c*) Is found in a state of destitution without means of support, and without father, mother, or lawful guardian, or whose father, mother, or lawful guardian is unable to provide for its support and education;

(*d*) Resides in any reputed brothel, or being a female child resides with any known or reputed prostitute, whether the prostitute be the parent of the child or not;

(*e*) Associates or dwells with any person, not being the parent of the child, known or reputed to be a thief or drunkard, or with any such person convicted of vagrancy.

Administration of estates. The Estates Administration Act, 1895 (No. 27), amends on certain points of detail the law with respect to the administration of estates of deceased persons.

Bread. The Sale of Bread Act, 1895 (No. 29), requires all bread to be sold by weight, subject to an exception for French or fancy breads or rolls when sold as such. It requires bakers and retail dealers to keep weights and measures and to weigh on request.

Natives. The Local Authorities Increased Powers Act, 1895 (No. 30), enables local authorities to make regulations for prohibiting and preventing the presence of natives, such as Kafirs, Fingoes, Basutos, Hottentots, Bushmen, Korannas, Griquas, Bechuanas, Zulus, and the like, in the streets and thoroughfares between 9 p.m. and 4 a.m., without a written pass or certificate from their employer or some duly authorized person. There are exceptions for the natives who are exempt from the operation of certain disqualifying Acts, or are registered owners of immovable property within the area of the local authority, and for members of the family of any such owner, and for persons having certificates of good character from the resident magistrate of the district.

Civil service. The Civil Service and Pensions Fund Act, 1895 (No. 32), is an important Act which consolidates and amends the enactments relating to the Civil Service of the Cape. The Civil Service is to include all persons continually employed in the discharge of duties, other than purely police or military, in any department of the public service, not being ministers of the Crown or judges of the Supreme Court or their clerks, or private secretaries to the Governor or aides-de-camp

to the Governor, or officers of Parliament. Provided that such persons are not remunerated solely by fees or allowances, and that their whole time is, subject to one or two exceptions, devoted to the public service. The fixed establishment of the Civil Service is defined by reference to a schedule. CAPE OF GOOD HOPE.

All candidates for admission into the Civil Service are required to pass a Civil Service examination. They must as a rule be between seventeen and twenty-five, but there is an exceptional power to admit candidates between twenty-five and thirty. When they have passed, they are ranged in two classes according to proficiency, and are entered in an official list, which shows the percentage of the maximum marks gained by each candidate. Ministers are to select civil servants from the official list. If a candidate does not get a post in the Civil Service before he is twenty-five, or in the special cases before he is thirty, he is removed from the list.

Members of the Civil Service may be retired on a superannuation allowance at the age of sixty, or in some cases, such as engine-drivers and the like, at the age of fifty. The scale of pension is much the same as in the English service; one-sixtieth for every year of service to every one who has served ten years, subject to a maximum of forty-sixtieths. There are provisions for allowances to officers incapacitated by infirmity, and to widows and children of officers dying from injuries while on duty, for special gratuities, and the like. There is a Civil Service pension fund formed by monthly deductions from the salaries and emoluments of members of the permanent Civil Service, and also a widows' fund formed in like manner by compulsory contributions.

A member of the Civil Service may be required by the treasurer to give security for the performance of his duties, and in that case is required to contribute to a fund called the Public Service Guarantee Fund.

All departments of the Civil Service are to be considered and treated as one service, and every person serving therein is to be liable at any time to be transferred from one office or department to another, and from one station to another on promotion or otherwise whenever the interests of the service may require it; but a civil servant may not, unless disrated in accordance with the Civil Service rules, be transferred without his own consent to an office of a lower grade, or one to which a lower salary is attached.

Under the Public Markets Act, 1895 (No. 33), cereals and their produce, potatoes, onions, and certain other vegetables and dried fruits, must, unless offered in lots of less than 50 lbs. weight, be sold in any public or municipal market by the 100 lbs. weight. **Markets.**

CAPE OF GOOD HOPE.

Vagrancy. The Vagrant Law Amendment Act, 1895 (No. 34), directs that a person charged with vagrancy is not to be acquitted merely by reason that the magistrate before whom he is tried finds that he had no intention to steal at the time when he was found upon any farm, or in or near any dwelling-house, shop, store, stable, outhouse, garden, vineyard, kraal, or other enclosed place.

Inland revenue. The Auction Duty Amendment Act, 1895 (No. 37), exempts from auction duty sales held on behalf of any church, religious denomination, benevolent, educational, or charitable purpose, including bazaar sales, but every such sale must be conducted by a duly licensed auctioneer.

Juvenile offenders. The Juvenile Offenders Apprenticeship Act, 1895 (No. 38), enables the Governor, with the approval of the chief justice, to order any male offender over sixteen and under twenty-one, who has been convicted of any crime, and sentenced to imprisonment for a term exceeding three months, to be apprenticed until the age of twenty-one or for some shorter period.

British Bechuanaland. The British Bechuanaland Annexation Act, 1895 (No. 41), provides for the annexation to the colony of the territories of British Bechuanaland, and for constituting a new electoral province entitled to return one member to the Legislative Council and three members for the Legislative Assembly. The Act provides for the judicial, fiscal, and administrative arrangements to be made in the new province.

Electricity. The Electric Lighting and Powers Act, 1895 (No. 42), enables the Governor to make regulations, and local authorities to make bye-laws for regulating the employment of electricity. The Governor's regulations are to be in accordance with the regulations for the time being of the Board of Trade of the United Kingdom, subject to such modifications as he may think expedient, but in no case more stringent.

Company debentures. The Company Debenture Act, 1895 (No. 43), authorizes registered companies to create and register preferential debentures.

2. NATAL.

[*Contributed by Sir Courtenay Ilbert.*]

Acts passed, 36.

The session which ended in September, 1895, was the third session of the first Colonial Parliament under the system of responsible government. Among the Acts passed in this session twelve appear to be of more than local interest.

NATAL.

Extradition.

The Extradition Act, 1895 (No. 3), authorizes in certain cases the temporary detention in, and conveyance through Natal, of any person accused or convicted of an extradition crime committed within the jurisdiction of a foreign state, and surrendered, or about to be surrendered, by one foreign State to another.

When a warrant has been issued in a colony, state, or territory, in South Africa for the extradition of a criminal, the Governor of Natal may, on application by the Government of the extraditing colony, state, or territory, and on due proof of the character of the crime, make an order authorizing the transfer of the criminal through Natal. This order legalizes the custody, conveyance, temporary detention in gaol, and recapture, of such a criminal while passing through Natal. The Act applies, in the first instance, only to criminals extraditable under an extradition treaty between the United Kingdom and Germany, but may be extended by proclamation to the cases of extradition treaties with other foreign countries, on proof of reciprocal provisions having been made.

Native code.

Three Acts are concerned specially with natives (Nos. 7, 13, 25).

Act No. 12 of 1864 had regulated the conditions under which natives might dispose of land by will or otherwise.

A board, appointed under Act No. 44 of 1887, had prepared a code of native law, which was formally enacted by Act 19 of 1891, and throws a curious light on the "kraal" system and other peculiarities of domestic life among the natives.

Article 97 of this code declares that testamentary succession is unknown [among natives], and that no native may, under native law, make a will except under the Act of 1864.

The object of Act 7 of 1895 is to repeal the Act of 1864, and re-enact it with modifications.

Under the new Act a native, subject to the operation of native law, may by will dispose of immovable property, but the will must, besides being signed by or on behalf of the testator, in the presence of two witnesses, be read over and explained to the testator by an administrator of native law in the presence of two witnesses, and the administrator's certificate must be recorded on the will. If the will is made by a native woman she must be assisted by her guardian, or by a person appointed by the administrator. No letters of administration are required for the property, but any dispute about it may be settled by the administrator of native law for the district.

Immovable property which belonged to a deceased native, may be transferred before the registrar of deeds either by the executor, or in case of intestacy, on proof of the transfer having been approved by the administrator of native law.

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When immovable property is bequeathed, under the Act, to a native woman, the bequest is to be deemed to be made to her guardian, on trust for her during her life, and after her death it is, subject to any directions in the will, to devolve on the head of the house to which she belonged at her death. But the guardians may sell the property during the woman's life with the approval of the administrator of native law.

A will under the Act is not to be revoked by the exemption of the natives from native law, or by a polygamous marriage ("marriage entered into during the subsistence of a prior marriage").

If a native, under native law, dies intestate, his estate is to be administered under the code of 1891, even though his heirs, or any of them, hold letters of exemption from native law, and the Supreme Chief may define the customs and usages and regulate the procedure in the administration of any such estate.

If an "exempted" native dies intestate, his estate is to be administered under the ordinary law of the colony, whether his heirs are exempted or not.

On failure of heirs the immovable property of a deceased native is to revert to the Supreme Chief.

Offences by natives.

A native High Court, and a special court for dealing with the offence of cattle stealing by natives, had been established by Acts of 1875 and 1876. These courts are abolished by Act 13 of 1895, and their jurisdiction is transferred to the Supreme Court.

Mission reserves.

Act 25 enables the Governor in Council to make rules for the regulation of Mission reserves. The rules may provide for the registration of all the people in the reserve; for yearly contributions from each native male adult towards the expenses of carrying out the Act; for the admission of natives to the reserve, and their removal; for the sale and hire of land; for restrictions on alienation; for appropriation of land for cultivation or pasture; and for matters relating to roads, health, and education. Lands may be reserved for native converts from heathendom, and the rules may prohibit, within such lands, all native customs and heathen rites and ceremonies inconsistent with the tenets of the religious body to whom the land is granted. The introduction of intoxicants into a reserve is prohibited. The powers of native chiefs within a Mission reserve may be regulated by the Governor.

Indian immigrants.

Two Acts deal with the vexed question of Indian immigrants or "coolies."

Act 17 amends the Indian Immigration Law, 1891, by requiring every Indian immigrant to enter into a covenant that on the expiration

of his contract of service he will either return to India or remain in Natal under indentures for successive two-year terms of service at a fixed rate of wages. The Indian Immigration Board is to provide a free passage to India for every Indian who desires to return to India at the end of his first or any subsequent term of service. If an indentured Indian fails either to return to India or to enter into a fresh indenture of service, he must take out a yearly licence to remain in the colony, and pay for it a fee of £3. The Act makes several other amendments of the law of 1891. *NATAL.*

Act 34 regulates the constitution of the Indian Immigration Trust Board, which is to be elected by the registered employers in the different divisions of the colony.

The Volunteer Act, 1895 (No. 23), contains a general code for the organization, regulation, and discipline of the Volunteer force in the colony. **Volunteers.**

The Privileges of Parliament Act of 1895 (No. 25) defines the privileges, immunities, and powers of the Legislative Council and the Legislative Assembly. It regulates the powers of the local Parliament to order attendance and production of documents, and to punish for contempt; protects the right of publishing the reports, papers, votes, and proceedings of each House; and declares that, subject to the provisions of the Act, the privileges, immunities, and powers of each House are to be the same as those of the Commons House of Parliament of Great Britain and Ireland, at the time of the passing of the Constitution Act of 1893. **Privileges of Parliament.**

Act 24 amends the Leprosy Law, 1890, by providing for the admission of a leper's relatives into a leper location, under conditions which involve their compulsory detention. **Leprosy.**

Acts 31 and 33 deal with two local plagues, grass fires and locusts.

The Grass Burning Act (No. 31) is an adoptive Act, that is to say, it may, on local application, be put in force by proclamation in any particular district. **Grass burning.**

Where it is in force a penalty is imposed for setting fire to grass, and, through negligence, causing damage to a neighbour's property; and a heavier penalty for wilfully or negligently setting fire to public land, or to another person's private land. And owners or occupiers of land are empowered to make, by ploughing or burning, "fire-breaks" on the boundary between their own lands and those of their neighbours.

Under the Locusts Extermination Act, 1895 (No. 33), the Governor may, by proclamation, declare any portion of the colony to be a "locust area." **Locusts.**

The occupiers of land within a locust area are required to concur

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in such steps as the Governor may deem necessary for exterminating locusts. The Governor in Council may appoint officers for carrying out the extermination of locusts in a locust area, and their officers are indemnified against legal proceedings for entering on land, taking materials, burning grass and brushwood, and the like.

Telegraphs.

The Telegraphic Message Copyright Act, 1895 (No. 36), lays down a principle which has not yet been recognized in England. Neither the English law of copyright nor the Berne Convention recognizes copyright in mere "news," apart from the literary form in which they are clothed. But Natal, like some of the other colonies, has gone further than the English law in protecting the interests of newspaper proprietors.

Under the Natal Act of 1895, whenever there is received at any office of the telegraph department any message transmitted by telegraph, for the purpose of publication in any newspaper printed or published in the colony, no person may, without the written consent of the newspaper proprietor, print or publish the message, or the substance thereof, or any extract therefrom, until "after a period of seventy-two hours from the time of the first publication of such message by the person or persons entitled to publish the same, provided that such period shall not extend beyond fifty hours from the time of the receipt as aforesaid at such office of such message (Sundays excepted)."[1] During this period of fifty hours, intelligence protected by the Act must not be telegraphed to any person for publication by any person except the newspaper proprietor, who is entitled to the exclusive use of the message. There are penalties for contravening the Act, and there is an express provision that the protection given to messages by telegraph is to extend to messages transmitted by pigeon and other special despatch.

[1] This is not very clear. Apparently the seventy-two hours count from the date of publication anywhere by any person entitled to publish the news, the fifty hours count from the receipt of the particular message in the colony.

VII. WEST AFRICA.

1. GAMBIA.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 13.

No. 7 imposes a yard tax in the Gambia Protectorate (*i.e.* the protected territory outside the colony, legislated for by the colony under the power of the Foreign Jurisdiction Act, 1890). Yard is practically synonymous with "compound" in the Indian sense; it is a plot of ground or enclosure containing one or more huts. **Yard tax.**

The owner or occupier of any yard containing not more than four huts is taxed at 4*s.* per annum. It may be noted that a hut tax is the ordinary mode of raising revenue in our African Protectorates—Zululand, Nyassaland, Niger Coast, etc.

No. 8 repeals previous legislation, and makes fresh provision for the travelling expenses of Government servants. **Travelling allowances.**

No. 12 reproduces the Uniforms Act, 1894 (57 & 58 Vict. c. 45). **Uniforms.**

No. 13 relates to trade licences in the protected territory. No person is allowed to trade there unless he is provided with a licence, for which he must have paid the scheduled fees. **Trade licences.**

2. GOLD COAST.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 9.

Of the ordinances passed, the following appear to be of more than local interest:—

No. 1 is a Land Registry Ordinance, the principal enactments of which prescribe the mode and effect of registering instruments of title relating to land. Instruments are registered by being copied at full length in the register books. Instruments affecting the same land take effect as from the date of registration, but the date of execution prevails, if the instrument was executed at the place of registration, and is registered within ten days, or within sixty days if executed elsewhere in the colony, or within one year if executed out of the colony. **Land registry.**

No. 2 enacts a re-draft of the Imperial Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61). **Public officer's protection.**

GOLD COAST.

Statute law revision. No. 3 is a Statute Law Revision Ordinance, passed in view of a revised edition of the Ordinances. The opportunity is taken to make a considerable number of minor amendments in past Ordinances, besides a considerable number of verbal alterations.

Uniforms. No. 5 reproduces the Uniforms Act, 1894 (57 & 58 Vict. c. 45).

Native labour. No. 9 is an interesting Ordinance on the native labour question. It appears to be tentative, as its operation is, for the present, limited to one year. The preamble recites that "by native custom it is obligatory on persons of the labouring class to give labour for public purposes on being called out by their chiefs or other native superiors." It proceeds to authorize the head chief of a district, or the chief of any town, or village, or the "captain of any company" (?), to call out for service as carriers such of the able-bodied males resident in any village or district as may be required by the Government as carriers for any public purpose. Minor headmen are bound to co-operate with their superiors in calling out the labour. The labourers must be paid at the rate of a shilling a day.

Any labourer who fails to respond to the call is liable to punishment "according to native customary law," or to a fine not exceeding £10, or imprisonment not exceeding three months.

3. SIERRA LEONE.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 20.

Education. No. 3 (Education Ordinance, 1895) repeals previous Ordinances, and establishes a Board of Education, consisting of the Governor, the members of the Executive Council, the inspector of schools, and four nominated members. Large powers of making rules are given to the board, but the Ordinance lays down broadly the conditions under which grants-in-aid can be given.

Police. No. 7 makes minor amendments in the police law of the colony.

Juries. No. 8 amends the law relating to juries, the principal enactment being a provision that any person charged with a criminal offence not punishable with death, may elect to be tried by assessors instead of by a jury. The judge selects the assessors (who are not to be less than three in number), from the special jurors' list. The Governor may also, in certain cases, make an order that public officers charged with certain offences with respect to Government property are to be tried in this way.

SIERRA LEONE.

The Ordinance also amends the law relating to the qualification of jurymen, and the mode in which jurors' lists are to be made up.

In the case of offences punishable with death, the verdict of a jury must be unanimous. In other cases, if, after deliberation, there is a two-thirds majority of the jury, the verdict of that majority is to be taken as the verdict of the whole jury.

Uniforms. No. 10 reproduces the Uniforms Act, 1894.

Human leopards. No. 15, which bears the somewhat familiar and ordinary title of "An Ordinance to Facilitate the Detection and Punishment of Crime," opens with this weird preamble: "Whereas there exists in the Imperi country a society known by the name of the Human Leopard Society, formed for the purpose of committing murder, and whereas many murders have been committed by men dressed so as to represent leopards, and armed with a three-pronged knife, commonly known as a leopard-knife, or other weapon." Therefore leopard-skins and leopard-knives and a native medicine called "borfima," are duly scheduled, and it is provided that any person wearing or possessing such things, and not being able to show a lawful purpose, shall be guilty of felony, and liable to fourteen years imprisonment. The Ordinance throws no light on the mischievous character of "borfima."

No. 20 consolidates and amends the law relating to auctioneers. It does not present any novel features.

4. LAGOS.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 10.

Uniforms. No 2 is the now familiar Uniforms Ordinance.

Public officers' guarantee fund. No. 3 was an attempt to establish a Public Officers' Guarantee Fund. This Ordinance has, however, been disallowed.

Civil service discipline. No. 7 confers upon the heads of departments a limited power of fining their subordinates for disobedience, impertinence, destruction of Government property, etc. The several offences are stated to be "offences against this Ordinance," and in any case the charge may be "investigated, tried, and determined" by the head of the department, who may convict without evidence on oath.

Civil police. No. 10 establishes the civil police as a separate body from the constabulary, which, as elsewhere in Africa, is a semi-military force. The civil police may, however, be called upon to serve with the military forces of the colony.

VIII. SOUTH ATLANTIC.

FALKLAND ISLANDS.

[*Contributed by Sir Courtenay Ilbert.*]

Ordinances passed, 12.

Lunatics. The Lunacy Ordinance of 1895 (No. 2) enables the Governor in Council to send lunatics from gaols in the colony to the United Kingdom. There appears to be no lunatic asylum in the colony.

Quarantine. No. 5 enables the Governor in Council to declare any port or place to be an infected place, and to subject to quarantine vessels coming therefrom.

School. Under Ord. No. 6 the parents or guardians of all children residing in Hanley, and between five and thirteen years of age, are required, under a penalty of 5*s.* fine, to send their children to school. Teachers are to furnish the names of absentees to the chief constable.

Uniforms. The Uniform Ordinance, 1895 (No. 7), applies to the colony the provisions of the English Uniforms Act.

Probate. The Probate Ordinance, 1895 (No. 8), regulates the probate jurisdiction in the colony.

Cattle disease. Ords. No. 4 and No. 12 deal with scab in sheep.

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 96.

Treaties. C. 3 provides for the extension to Great Britain and her colonies, and to certain foreign Powers, of the advantages granted to France with respect to its commerce with Canada by the treaty of 1893.

[1] The session of 58 & 59 Vict. was closed in July, 1895. The first forty-four Acts of this session are public general Acts, the remainder are local and private Acts.

C. 6 authorizes the Governor in Council to grant out of the consolidated fund of Canada a bounty on beet-root sugar produced in Canada. **Bounties.**

C. 7 grants a bounty on gold, silver, and silver lead ores worked in Canada.

C. 9 amends the law as to payment of members, and provides that the deduction of $8 a day for absence, shall not be made for twelve days. **Payment of members.**

Four Acts, cc. 11, 31, 32, 33, relate to the representation of the North-West Territories, and to legislation for those territories. **North-West Territories.**

C. 11 gives the franchise to all non-Indian adult British subjects, who have resided twelve months in the territories and three months in the electoral district.

C. 31 adds municipal wash-houses, the constitution of irrigation districts, railway companies (not including tramways and street railways), steamboat, canal, telegraph, and irrigation companies to the powers of the legislature, and provides for the resignation of members.

C. 32 legalizes payments of funds out of the North-West Territories general fund.

C. 33 deals with irrigation in the North-West Territories.

CC. 14 and 15 amend the Civil Service Act as to appointments in, and examination for, the Civil Service. **Civil Service.**

Inquiries in the case of irregularities at examinations are regulated. Witnesses may be summoned and examined on oath.

The employment of temporary clerks and messengers is regulated. Temporary clerks are not to be paid more than $400 a year to commence (with $25 extra for book-keeping and type-writing), increasing by annual amounts of $30, to a maximum of $600. Temporary messengers begin at not more than $300, increasing by $30 to a maximum of $500.

C. 16 amends the Act respecting Dominion notes. Notes may be issued against an equal amount of gold to any amount in excess of the $20,000,000 fixed by law. **Dominion notes.**

C. 17 amends the Act respecting the incorporation of Local Boards of Trade, by making new definitions of "district" and "judicial district." **Trade.**

CC. 18 and 21 relate to companies. Orders of Court for payment of money or costs are to be deemed judgments. Companies may hold real estate necessary for their business. **Companies.**

CC. 19 and 20 amend the Insurance Act. The Treasury may exempt any friendly society from the Act. Companies, incorporated **Insurance.**

DOMINION OF CANADA.

elsewhere, but licensed in Canada, are to furnish annual statements of their accounts.

Custom and inland revenue.

The Customs Amendment Act, 1895 (c. 22), regulates the constitution of the Board of Customs.

C. 23 amends the Customs tariff, and c. 25 amends the Inland Revenue Act as to excise duties on spirits. The duties are—on grain spirit, $1 70 cents; on malt spirits, $1 72 cents; on spirits from molasses, $1 73 cents.

Fisheries.

C. 27 amends the Fisheries Act as to the pollution of waters. Pollution of waters, except where exempted by the Governor in Council, is prohibited.

C. 28 provides that a licence shall be necessary for canning or curing lobsters, and provides that the managers, etc., of lobster factories or canning establishments shall take from lobsters their eggs and deliver them to a person authorized by the Minister of Marine and Fisheries to receive them.

Natives.

C. 35 amends the Indian Act (R. S. C. c. 43) as to the alienation of reserves, and as to the investment and management of Indian funds, and provides that the Governor in Council may regulate the election of Indian chiefs, and may depose them for dishonesty, intemperance, or immorality. Any Indian who engages or assists in any celebration or dance in which the wounding or mutilation of the dead or living body of any human being or animal forms a part is to be guilty of an indictable offence.

Copyright.

C. 37 amends the Copyright Act. Any person domiciled in Canada obtaining a licence from the Minister of Agriculture may reproduce in Canada any work which the copyright owner fails to print or produce in Canada. Such a licence confers no exclusive right of publication.

Criminal law.

C. 40 amends the Criminal Code, 1892, by making the provisions as to gaming houses and lotteries more stringent.

Penitentiary.

CC. 41, 42 amend the Acts relating to penitentiaries. An insane convict may be detained in insane wards notwithstanding the expiration of his sentence. An insane convict may be removed to an asylum. The salaries of officers in penitentiaries are regulated.

2. QUEBEC.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 109.

C. 14 grants a bounty to farmers cultivating sugar-beet. **Finance (bounty).**

CC. 14, 15 amend the Quebec Licence Law, by defining a *bonâ fide* member of a club, by providing for the giving of security by an applicant for a wholesale liquor licence, and by regulating the arrest and punishment of pedlars without licences or refusing to show their licences. **Intoxicating liquors.**

C. 16 amends the law as to duties and succession and transfers of real estate, by enacting that the duty payable on successions devolving on uncles and aunts of the deceased or their descendants shall be 5 per cent. **Death duties.**

C. 17 amends in detail the Twelve Children Act, which provided for a free grant of 100 acres to fathers and mothers having twelve children living. **Land.**

C. 19 amends the law respecting the protection of forests against fire. The Lieutenant-Governor may by proclamation declare any portion of the province to be a "fire district." Fires are not be lit in fire districts between April 1 and November 1, except by *bonâ fide* settlers for the purpose of clearing land. Railway companies and timber licencees are to place men at the disposal of the superintendent of forest fires. A general superintendent of forest fires is to be appointed in each fire district. **Fire Protection.**

C. 20 allows fish to be taken during the close season for the purpose of pisciculture. Fishways are to be provided at dams. **Fishery.**

C. 21 amends the game laws by making the close time for partridges from February 1 to September 15, and c. 22 provides for a territory being set apart as a national park and forest reservation of fish and game preserves. **Game.**

C. 23 provides for the setting aside of certain mountain lands unfit for cultivation as a forest reserve, and for the purpose of a sanatorium for pulmonary diseases. **Mountain lands.**

CC. 31, 32 make amendments in the jury law. **Jury.**

C. 31 amends and fixes the qualification of grand and petit jurors in cities and towns. A revising board is constituted to examine and

[1] The session 58 Vict. ended in January, 1895. The first forty-seven chapters of this session would probably be treated in the United Kingdom as public and general.

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revise the list of jurors, and the method of making lists of jurors is prescribed.

C. 32 provides that for jury service a commercial traveller must be served personally.

Coroners. CC. 33, 34 amend the law as to coroners. The former relates to the accounts of coroners, and the salary of the coroner of Montreal; the latter relates to inquiries held in cases of fire.

Legal profession. C. 36 relates to the discipline of the bar. The syndic is specially charged with the discipline of the bar. An appeal from the decision of the council of a section to the general council is allowed in cases entailing any punishment of a member of the bar.

Company. C. 37 amends the Joint Stock Incorporation Act.

Electric lighting. C. 38 relates to the subject of electric lighting. Certain provisions of the law relating to gas and water companies is to apply to electric light and water companies.

Corrupt practices. C. 42 relates to the subject of corrupt practices. Members of municipal councils are disqualified for interest in contracts. Aldermen and councillors are not to hold offices of profit in the pay of the corporation, and the procedure on complaint of an offence of the like nature is regulated.

Land tenure. C. 45 regulates the tenure of land in the Magdalen Islands. The recitals give a history of those islands from their grant in 1798 by letters patent to Admiral Sir Isaac Coffin.

Insurance. C. 46 relates to life insurance. If a husband, who is in community of property, insures his life, and continues paying the premiums for more than a year after the death of his wife, the insurance money is to belong to the husband's estate, subject to the obligation of accounting to the wife's estate for the surrender value at the time of the dissolution of the community.

3. ONTARIO.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 127.

Computation of time. The Definition of Time Act, 1895 (c. 2), declares the legal meaning of expressions relative to time to be for that part of the province east of eighty-seven degrees west longitude five hours behind Greenwich

[1] The session 58 Vict. ended in April, 1895. The Acts of each session are numbered in consecutive chapters. They are not classified as general or local. The first sixty chapters of this session would probably be treated in the United Kingdom as public and general.

time, and for that part of the province west of that meridian six hours behind Greenwich time. The numbering of the hours of the day up to twenty-four is also legalized. *ONTARIO.*

C. 7 amends the Succession Duty Act, 1892, by making duties payable by persons not domiciled in the province, and subjecting to duty property brought into the province for distribution, where duty equal or exceeding the provincial rate has not been paid elsewhere to the extent of the difference between such rate (if any) and the provincial rate. **Succession duty.**

C. 10 establishes a bureau of industries for the collection, tabulation, and publication of information. **Agriculture and horticulture.**

The Agriculture and Arts Act, 1895, consolidates and amends the previous Acts as to agricultural and horticultural societies.

C. 41 allows any cheese and butter manufacturing associations, with the approval of its shareholders, to mortgage the real and personal property of the association by deed under the corporate seal, and signed by the treasurer and secretary.

The Judicature Act, 1895 (c. 12), consolidates the Acts as to the Supreme Court of Ontario. The court is divided into the High Court of Justice and a Court of Appeal, the High Court consisting of a Queen's Bench, a Chancery, and a Common Pleas Division, the president of the Chancery Division being styled "Lord Chancellor." **Supreme court.**

The jurisdiction is that possessed by the English courts at certain specified times, and as to testamentary and other special matters by reference to certain provincial Statutes. S. 79 of the Act makes judicial decision of divisional courts of the Court of Appeal binding on all courts except with concurrence of the judges who gave the decision, and all decisions binding on courts of co-ordinate jurisdiction with a similar exception. The Act provides for the issue of rules of court, but certain details of procedure, such as service out of the jurisdiction, are dealt with in the body of the Act. The Law Courts Act, 1895 (c. 13), limits the number of appeals.

Two Acts (cc. 15, 16) amend the law as to juries (*inter alia*), making it contempt of court to tamper with jurors; making the agreement of ten jurors sufficient in civil cases; and in cases of death, illness, or discovery of interest of a juror during trial, allowing the trial to proceed with eleven jurors. **Juries.**

The Settled Estates Act, 1895 (c. 20), relates to leases, sales, and mortgages of settled estates. **Settled estates.**

The Intestates' Estates Act, 1895 (c. 21), reproduces for Canada the provisions of the Imperial Intestates Act, 1890 (53 & 54 Vict. c. 29), under which provision is made for the widow of an intestate who leaves no issue. **Intestates' estates.**

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wer.

C. 25 bars actions of dower in cases where the wife has signed a conveyance of the land by the husband otherwise than as a witness. In cases where the wife has barred her dower in case of a mortgage, and the land is sold under any power of sale in the mortgage or by legal process, dower is to affect any surplus in the purchase-money over the mortgage debt, and the dower is to be calculated on the whole amount of the purchase-money.

Landlord and tenant. The Landlord and Tenant Act, 1894 (c. 26), declares that the relation of landlord and tenant is founded on the express or implied contract of the parties, and not upon tenure or service.

Legal Practitioners. C. 27 enables women to be called to the Bar.

Chemist and Druggist. Under c. 29, patent medicines are exempted from the Pharmacy Act; but in case there is reason to apprehend that any patent medicine or proprietary medicine contains a schedule dangerous to health in the prescribed doses, the Provincial Board of Health, after analysis and hearing the manufacturer, may report to the Lieutenant-Governor in Council, who may direct that the provisions of the Pharmacy Act are to apply to that patent or proprietary medicine.

Veterinary surgeon. C. 30 punishes persons wrongfully assuming the title of "veterinary surgeon."

Highway. C. 31 amends the General Road Companies Act as to the system of tolls levied on vehicles by which the expenses of the highways are provided for.

Trust companies. The Trust Companies Act, 1895 (c. 32), requires that companies formed to carry on trust business shall have three-fourths of their stock held by residents in Ontario, and prohibits companies from obtaining letters patent to become guardians of the persons of infants, or committee of the persons of lunatics.

Insurance. C. 34 amends the law as to insurance by prohibiting loans to or by directors and officers, abolishing preferential creditors except wage earners, allowing a company employing more than twenty-five officers to guarantee them itself, and amending many details of procedure.

Electric railway. The Electric Railway Act, 1895 (c. 38), is a Clauses Act to be incorporated, except so far as expressly varied or excepted, in the special Act of any electric railway undertaking.

Municipal corporations. C. 43 provides for the appointment of an official arbitrator to decide claims against certain corporations.

C. 46 provides that the law as to corporations manufacturing gas, shall apply to their mining for and winning from the earth natural gas.

Library. The Public Libraries Act, 1895 (c. 45), amends and consolidates the Acts as to free libraries and mechanics' institutes.

Sale of fruit. C. 48 deals with fraud in the sale of fruit. There are penalties for

altering or defacing marks on articles used for packing fruit or offering it for sale, and for packing fruit so as to conceal its size or quality by placing the better fruit on the top.

Public health.

The Public Health Act, 1895 (c. 49), amends the Public Health Act as to the appointment of Local Boards of Health in every township and incorporated village, and provides for the establishment of public water supplies and sewerage systems with the consent of the Provincial Board of Health.

Factory and workshop.

Two Acts (cc. 50, 51) relate to the protection of persons employed in factories and businesses.

C. 50 amends the Ontario Factories Acts on lines somewhat similar to the recent Imperial legislation. In the case of factories over two stories in height, it requires a rope to be provided for each window above the ground floor. Notice of accidents is to be given to the inspector. The Lieutenant-Governor in Council has power to prohibit the employment of girls under eighteen and boys under sixteen in dangerous unhealthy employment. Bakehouses and bakeshops are added to the scheduled list of employments.

C. 51 provides for the inspection of persons employed in places of business other than factories. One of the two inspectors appointed by a municipality is to be a woman.

Protection of children.

C. 52 amends the law as to the protection of children by providing for the transferring of children from the care of certain institutions to children's aid societies; and by making it unlawful to induce children placed out or apprenticed by charitable institutions to leave their places of apprenticeship, and depriving parents who have surrendered a child to a charitable institution of the custody of that child.

Game.

C. 56 amends the Ontario Game Protection Act, 1893, by allowing licensed persons not domiciled in the province to export the deer he is allowed to kill, and by prohibiting the killing of certain birds and animals within the limits of the Rondean Provincial Park.

Education.

C. 57 amends the High Schools and the Public Schools Acts, by allowing the trustees, with certain consents, to sell the school site, and to be dissolved by proclamation, and by permitting the remission of school tax when certain fees are paid in the case of children living more than three miles in a direct line from the school in their own section.

Industrial school.

C. 59 permits corporations of cities and towns to guarantee debentures issued for industrial school purposes, and allows board schools to pay an allowance per capita to an industrial board school in lieu of providing teachers.

4. NOVA SCOTIA.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed—Public General, 42; Local 64; Private, 66; total, 172.

Schools. C. 1 amends and consolidates the Acts relating to public instruction. It provides for a council of public instruction, for a superintendent of education, for a board of commissioners in each county, and a board of trustees in each school centre. The board of trustees may establish high schools or academies. There are provisions as to the education of blind, deaf, or mute persons, and also as to a variety of matters dealt with in England by the Minutes of the Education Department.

Intoxicating liquors. The Liquor Licence Act, 1895 (c. 2), deals with applications for, grant of, and transfer of licences, and restricts the amount of liquor which may be sold to any individual. Justices may forbid any licensed person to sell any liquor to any specified habitual drunkard during one year. Any person selling an excessive amount of liquor to a man who comes to his death while in a state of intoxication is liable to an action by the legal representatives of the deceased. Any one injured by a drunken man to whom liquor has been furnished in violation of law has a right of joint action against the drunken person and the persons furnishing the liquor.

Local government. CC. 3, 4 consolidate the law relating to county incorporations and town incorporations respectively.

CC. 5, 6 amend and consolidate the Acts relating to municipal assessment.

Arbitration. The Arbitration Act, 1895 (c. 7), is virtually a re-enactment of the Imperial Arbitration Act, 1889.

Death duties. The Succession Duty Act, 1895 (c. 8), amends and consolidates the Acts respecting succession duties, and imposes a duty on all property real and personal varying from 2½ per cent. to 10 per cent. The Act does not apply to estates not exceeding $5000, or, where the property passes to certain near relatives, $25,000.

Marriage. C. 10 provides for the solemnization of marriages by commissioners and staff officers of the Salvation Army.

Factors. The Factors Act, 1895 (c. 11), is a re-enactment of the Imperial Factors Act, 1889.

Coroners. C. 15 amends the law as to coroners. It transfers their powers in certain towns to an officer termed "Medical Examiner."

[1] The session 58 Vict. ended in March, 1895. The first forty-two chapters of this session are public statutes, and the remainder are local.

C. 16 regulates the application of a grant annually made by the province for the encouragement of exhibitions in the different counties. *NOVA SCOTIA.*

C. 17 adopts the principles of the Imperial Shops Hours Act, 1892, and restricts the hours during which young persons may be employed. Parents allowing the Act to be contravened are liable to a penalty, and female employees must be provided with chairs. **Exhibition.** **Shop hours.**

C. 18 provides that an approved trust company may be appointed sole trustee where previously more than one trustee was required. **Trustee.**

C. 14 amends the law as to dentists. Any one performing a dental operation in a public place is liable to a penalty. **Dentist.**

5. BRITISH COLUMBIA.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 69.

The Bills of Sale Amendment Act, 1895 (c. 2), provides for the local registration of bills of sale. **Bills of sale.**

The Bureau of Mines Act, 1895 (c. 3), makes provision for the collection, publication, and circulation of information as to the mineral wealth of the province, and for this purpose establishes a central office and a museum of minerals, and lecture halls and a laboratory, which are to be under the charge of the Provincial Mineralogist subject to the instructions of the Minister of Mines. Mine-owners and others are to furnish information in reply to circulars or application by the department, and officers and agents employed in collecting data for this purpose are entitled to receive a copy of the publications and reports of the department. The minister may make arrangements with the Dominion or other governments for collection and transmission of information as to mining industries, and may also provide for the examination and grant of certificates to assayers. **Mines.**

The Cattle Act Amendment Act, 1895 (c. 6) provides that cattle branded by the cutting off of both their ears are not to be considered as properly branded for the purposes of the Act relating to that subject. The Contagious Diseases (Animals) Act Amendment Act, 1895 (c. 9) provides for the inspection of dairies and for the publication in the official *Gazette* of a summary of the certificate which is to be given by the inspectors on each inspection. **Cattle.**

The Companies Act Amendment Act, 1895 (c. 8), authorizes foreign **Companies.**

[1] The sessions 58 Vict. ended in February, 1895. The first fifty-eight Acts are public; the remainder are private Acts.

BRITISH COLUMBIA.

companies to operate in the province upon registering under the Act, and provides for the extension of the objects of a company to additional business of a similar nature to that provided for in the articles of association. The consequent amendment of the certificate of incorporation is made by the registrar of Joint Stock Companies at a cost of $10, and no application to a court is necessary. The Act further provides for the rectification of the certificate of incorporation and memorandum by the Registrar in cases where there are discrepancies in the name of the company as appearing in different documents and also for the grant of powers of attorney by companies.

Boundaries. The Counties Definition Act, 1895 (c. 10) is directed to the simplification of administrative and judicial areas. It divides the province into seven counties, defined by the electoral districts of which they consist, and substitutes those counties for the judicial and other districts under the Supreme Court, County Court, and Sheriff's Acts. Power is given to the Lieutenant-Governor, by proclamation, to annex any *gore* or small tract of land to any adjacent county, to settle questions as to county boundaries, and to substitute the new counties for the corresponding jury districts under the Jurors Act.

Petty sessional division. The Petty Sessions Act, 1895 (c. 42) provides for the division of the province into petty sessional divisions, which may be either the counties established by the Counties Definition Act, 1895, or other areas.

Supreme Court. The new provisions as to judicial districts have been already referred to. The Supreme Court Act Amendment Act, 1895 (c. 12), enables the Governor in Council to assign the judges of the Supreme Court to particular counties. Persons obtaining trial by jury are to deposit with the sheriff a sum sufficient to cover the expenses of summoning and paying the jury.

Small debts. The Small Debts Act, 1895 (c. 13), gives a civil jurisdiction to stipendiaries and police magistrates, (*a*) where a justice of the peace has such jurisdiction, or (*b*) where a claim for debt as originally brought or reduced does not exceed $100. All decisions are to be given in open court, and an appeal lies to the nearest county court or to a judge of the Supreme Court.

Agriculture and horticulture. The new provisions as to the inspection of dairies have been already referred to. Under the Dairy Association Act, 1895 (c. 15), any five or more persons who desire to be associated for the manufacture of cheese and butter may be incorporated as a body corporate, with power to hold lands with limited liability

The Thistles Act, 1895 (c. 54), provides for the destruction of thistles by or at the expense of the owner.

Dentists. The Dentistry Consolidation Act, 1895 (c. 16), amends and

consolidates the previous law. The Board of Examiners, in addition to their duties as examiners, are to act as a disciplinary committee, and, subject to appeal to the Supreme Court, may remove a dentist from the registry.

Distress. The Distress for Rent Act, 1895 (c. 17), cuts down the landlord's right to distrain to three months' rent.

Aliens. The Provincial Voters Act Amendment Act, 1895 (c. 20), deprives Chinese, Japanese, or Indians of the right to vote.

The Burrard Inlet Railway and Ferry Company Incorporation Act Amendment Act, 1895 (c. 59), declares that it is passed upon the express understanding that no Chinese or Japanese is to be employed in or about the works thereby authorized, and the terms "Chinese" and "Japanese" are defined as including all natives of those empires not born of British parents.

Preferential payments. Under the Execution Act Amendment Act, 1895 (c. 21), the claims for wages of clerks, servants, or workmen are to have a preference in cases of seizure in execution.

Under the Woodman's Lien for Wages Act, 1895 (c. 58), persons performing any labour or service in connection with logs or timber in the province have a lien for their work in precedence of all other liens except Crown claims.

Game and wild birds. By the Game Protection Act, 1895 (c. 23), the female of the elk, of the moose, and of the mountain sheep, certain birds, including the blackbird, the hen pheasant, and the partridge, and all other birds which subsist principally on noxious insects, are protected all the year round. A close season for pheasants, blue grouse, wild duck, and for hare, deer, and other animals is also established; and a person not domiciled in the province may not at any time hunt or kill those birds or animals without a licence. Deer may not be hunted with dogs, or killed for their skins alone; but if found depasturing within cultivated fields may be killed by a resident farmer at any time. A limit is put on the number of deer and other animals, and of wild ducks, that may be killed by one person during the year, and there is also a further close season as regards killing certain animals and birds between sunset and sunrise. The use of swivel-guns and sunken punts in duck-shooting is forbidden.

Legal profession. The Legal Profession Act, 1895 (c. 29), is a consolidating and amending Act. It incorporates the Law Society of the provinces, and provides for the election meetings and powers of the benchers, who are the governing body of the society. Nine of the benchers are elected by the practising barristers and solicitors; and the Attorney-General and all retired judges of the Supreme Court of the province and the Attorney-General of the Dominion are ex-officio benchers. The powers

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of the benchers extend to calls to the bar and admission of solicitors, and to the power (by a two-thirds majority) of disbarring and striking off the rolls, subject to appeal to a judge of the Supreme Court; to the regulation of examinations, and the appointment of lecturers, etc.; and to the reporting and printing of legal decisions. The names of students at law and articled clerks may be removed from the books of the society for unprofessional conduct. A solicitor may become a barrister, and *vice versa*, after being in practice for one year—but in either case on passing a special examination. No solicitor may have more than two articled clerks. Both barristers and solicitors pay annual fees which with the penalties under the Act, are the property of the society.

Intoxicating liquors.

The Licence Act, 1895 (c. 30), imports an implied covenant to obey the laws relating to liquor vending into all leases of licensed premises. On application for a licence, the licensing authority must be satisfied as to the suitability of the premises.

Adulteration.

The Milk Fraud Act, 1895 (c. 36), prohibits persons from selling adulterated or skim or tainted milk to cheese or butter manufacturers without notice. A cheese or butter manufacturer can require the owner of cows whose milk is being supplied to him to submit the cows to a milk test, and may inspect the cow-owner's farms, stables, and milk-room.

Municipalities.

The Municipal Act Amendment Act, 1895 (c. 41), amends the Municipal Act, 1892. Women can vote in elections for councillors, but are not qualified for election themselves. The old title "reeve" is retained as that of a municipal officer.

Statute law revision.

The Revised Statutes Act, 1895 (c. 80), provides for the appointment of commissioners to revise and consolidate the laws of British Columbia and the Statute law of England applicable to the province. All Acts and proclamations which are expired or repealed, and the schedules of repealing Acts, are to be omitted. The commissioners are to revise and alter the language "so as to give better effect to the spirit and meaning of the law," and a comprehensive index is to be added.

Taxes.

The Assessment Act Amendment Act, 1895 (c. 52), amends the law as to the assessment of taxes. Any person who neglects to pay his taxes may be distrained on by the collector. The assessment on agents and trustees is regulated, and the nature of returns to be made to the assessor is prescribed.

Landlord and tenant.

Under the Over-holding Tenants Act, 1895 (c. 53), landlords, where a tenant refuses to quit possession on the expiration of his tenancy, may apply to the county court for an ejectment order, and the procedure before that court is regulated.

Tramways.

The Tramway Company Incorporation Act, 1891 (c. 55), provides

for the incorporation of tramway, telephone, and telegraph companies by a certificate of the Registrar of Joint-Stock Companies. Objections by landowners or rival companies are to be determined by Order in Council of the Lieutenant-Governor. *BRITISH COLUMBIA.*

6. NEW BRUNSWICK.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 88.

C. 6 relates to assignments and preferences by insolvent persons. **Insolvency.**

C. 9 provides for the establishment, in conjunction with the other provincial governments or of the Dominion Government, of a system of examination and branding of butter and cheese intended for export. **Agriculture and horticulture.**

C. 10 requires a licence for the killing of moose or caribou, and prohibits the trapping or snaring of these animals. It protects wild fowl and the nests and eggs of gulls within certain portions of the province; and it prohibits absolutely the killing of partridges for sale for a period of three years. **Game and wild birds.**

CC. 14, 15, and 18 amend the procedure of the Supreme Court. **Supreme Court.**

C. 19 provides for the appointment and payment of a reporter "learned in the law" to report decisions in equity.

C. 28 provides for the salaries of the official stenographers.

C. 16 makes account-books of deceased persons admissible in evidence. **Evidence.**

C. 20 amends the law as to procedure fees and salaries of judges and officers in Courts of Probate. **Probate Courts.**

C. 23 amends the Registry Act. Instruments affecting any interest in or title to land, if not registered within three months, are to be deemed fraudulent and void against any *bonâ fide* judgment creditor who has previously registered a memorial of judgment, or has issued or lodged with the sheriff a writ of *fi. fa.* **Registry.**

C. 24 consolidates the law as to Married Women's Property on the lines of the Imperial Married Women's Property Acts. **Married women.**

C. 25 provides for life insurances being effected for the benefit of wives and children. **Insurance.**

C. 27 provides for the solemnization of marriages by commissioners and staff officers in the Salvation Army. **Marriage.**

C. 29 empowers the sheriff, on the request of resident freeholders, to **Buildings.**

[1] The session 58 Vict. ended in April, 1895. The first forty-one chapters are public Acts, the following twenty-nine are local, and the remainder private Acts.

NEW BRUNSWICK.

compel the removal in rural districts of any old or partly burned buildings of a dangerous character.

Jury. C. 36 exempts militiamen from jury service.

Pedlars. C. 39 provides for the licensing of "pedlars," and contains an exemption in favour of persons hawking "any products of the garden, farm, or sea."

7. MANITOBA.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 54.

Dairies. Four Acts were passed providing for the incorporation of dairy factories and the aiding of creameries. C. 9 provides for the grant of powers to dairy factories to carry on additional businesses. Under c. 1, creameries and cheese factories may be aided by agricultural societies. Under cc. 7, 8, agricultural societies may be aided out of provincial funds.

Assignments. C. 2 amends the Assignment Acts and regulates assignments for the benefit of creditors to persons other than the official assignee.

Bills of Sale. C. 3 amends the Bills of Sale Act by giving priority to mortgages on growing crops created to secure the price of seed grain.

Companies. The Foreign Corporations Act (c. 4) regulates companies and corporations incorporated out of Manitoba and carrying on business within that province. Such companies, if licensed under the Act, can hold real estate and have other privileges.

C. 15 provides for the punishment of any corporation or company issuing any advertisement, letter-head, or account or document containing a false statement as to the subscribed capital or as to the incorporation of the company.

County courts. C. 5 amends the County Court Act as to transcribing judgment into other county courts.

Supreme Court. The Queen's Bench Act, 1895 (c. 6), regulates the constitution and practice of the Court of Queen's Bench. Rules of procedure are scheduled to the Act.

Administration. C. 10 empowers an administrator to sell real estate for the purpose of distributing the proceeds, whether there are debts or not.

Drainage of land. The Land Drainage Act (c. 11) provides for the formation of drainage

[1] The session 58 & 59 Vict. ended in June, 1895. The Provincial Statute Book is divided into two volumes: (i.) Public Acts; (ii.) Private Acts; but six of the Acts in the former volume would probably be treated in the United Kingdom as local Acts.

districts by Order in Council for the purpose of reclaiming land. A rate is levied for the district, and the land benefited can be sold for arrears of taxes. *MANITOBA.*

C. 15 exempts from execution a certain number of horses, sheep, fowls, etc., and their food. **Executions.**

C. 14 provides penalties for kindling a fire and leaving it burning, or letting it run so as to spread on to the woods or lands of other persons. **Fire prevention.**

C. 16 limits the number of deer that may be killed by one person in one season. **Game.**

C. 17 empowers the province to lend one of the rural municipalities a sum for purchase of seed grain under circumstances somewhat similar to those under which the Seed Potatoes (Ireland) Acts were passed. **Seed grain.**

The Humane Societies Act (c. 18) provides for the incorporation of societies for preventing cruelty to animals or the ill-usage of men, women, and children. **Humane societies.**

C. 19 enables the official administrator for a judicial district to be appointed guardian of an infant who has no other guardian. **Infants.**

C. 20 enables an infant's father to obtain letters of guardianship of his or her person and estate.

C. 21 requires insurance companies to provide additional security when the year's risks exceed a certain amount. **Insurance.**

C. 26 provides for the appropriation of policies effected by (1) a man for the benefit of his wife or children, or (2) by a woman for the benefit of her husband or children.

The Mechanics' Lien Amendment Act (c. 28) gives mechanics and labourers engaged in building or erecting machinery a lien for thirty days' wages. **Lien.**

The Municipal Hail Insurance Act (c. 33) enables rural municipalities to levy a rate for indemnifying ratepayers whose crops are destroyed or damaged by hail. **Municipalties.**

C. 40 provides for the supply of vaccine and for amending the list of diseases mentioned in the Public Health Act by adding typhoid fever, puerperal fever, tuberculosis, erysipelas, and scabies. **Diseases prevention.**

C. 47 empowers the denominational colleges which are affiliated to the University of Manitoba to grant degrees in divinity. **Universities.**

C. 48 is an Employers' Liability Act, containing a definition of "workman" which may be of interest. The term "does not include a labourer, domestic or menial servant in husbandry, gardening, or fruit-growing, where the personal injury caused to any such servant has been occasioned by or has arisen from or in the usual course of his work or employment, as a domestic or menial servant in husbandry, gardening, or fruit-growing; but, save as aforesaid, means any railway **Employers liability.**

MANITOBA. servant, journeyman, artificer, handicraftsman, miner, or person otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, who has entered into or works under a contract with an employer, . . . expressed or implied, oral or in writing, . . . a contract of service or a contract personally to execute any work or labour."

8. PRINCE EDWARD'S ISLAND.[1]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 18.

Coroners. C. 4 repeals the residential qualification for a coroner.

Seduction. C. 5 provides that persons who have been cast in damages for seduction shall not be freed from their liability by becoming insolvent.

Agriculture and horticulture. C. 11 is directed to the extermination of black-knot, a fungus which attacks plum and cherry trees. Inspectors are appointed, and owners are subject to a penalty if they do not cut out and burn all black-knot. Compare the Destructive Insects Act of 1877 (40 & 41 Vict. c. 68), which was directed against the Colorado beetle.

9. NEWFOUNDLAND.[2]

[*Contributed by A. Pulling, Esq.*]

Acts passed, 40.

Banking. CC. 1 and 2 were passed in consequence of the suspension of payment by the Union and Commercial Banks of Newfoundland. The issue powers of the banks are suspended until all liabilities have been paid in full. The Governor in Council is to appoint for each bank a registrar, who is to endorse on each bank-note presented to him before a certain date a prescribed percentage of its face value. This percentage is guaranteed by Government.

Factor. C. 2 empowers certain banks to lend on the security of warehouse receipts and bills of lading, and give such banks a lien prior to that of the unpaid vendor. The Act also makes provision for the manufacture

[1] The session 58 Vict. ended in April, 1895. Of the Acts of this session, twelve would probably be treated in the United Kingdom as public and general.

[2] The session 58 & 59 Vict. ended in August. 1895. The Acts are not classified as general and local.

of goods from articles so pledged, and the sale of pledges on non-payment of debt. *NEWFOUNDLAND.*

C. 14 contains the import tariff, which includes duties on jam, vegetables, and other agricultural products. The Act also imposes duties on local distillation, and regulates drawbacks, and provides for additional duties on imports from countries, the fishermen of which are privileged to take cod-fish on the coasts of the colony, and which levy duties on the colonial fisheries, and further provides for reduction of the duties on certain products of particular countries when those countries reduce the duty on fish imported to those countries from Newfoundland. **Customs.**

C. 17 is a re-enactment for the colony of the Imperial Married Women's Property Act, 1893. **Married women.**

C. 18 makes words spoken and published imputing adultery, unchastity, "or other like immorality" actionable.[1] **Defamation.**

C. 19 amends the law as to admission to the bar, and reduces the term of service of solicitors' clerks. **Legal profession.**

C. 26 is a virtual re-enactment for the colony of the Imperial Arbitration Act, 1889, with a few modifications. **Arbitration.**

C. 31 consolidates and amends the law relating to education. There are separate grants for general education, destitute and special districts, higher education, training of pupil teachers, and encouragement of teachers. These grants are apportionable amongst the religious denominations of the colony according to population, and are to be expended by boards of education for the districts constituted by the Act. The denominations recognized are: Church of England, Roman Catholic, Methodist, and Congregationalist. Further specific grants are made for inspection and other purposes. Fees varying from $1 to $4 a year are payable by each pupil. The syllabus for grading teachers, the form of teachers' agreement, and the "standards" of education, which in England are prescribed by Minutes of the Education Department, are scheduled to the Act, which also contains tables of premiums payable by teachers for securing pensions to them. The Act further provides for a council of higher education. **Education.**

Certain rules and regulations made by the Fisheries Board, which were confirmed by resolution of the Legislative Council and House of Assembly, are printed at the end of the Statute Book. **Fisheries.**

[1] Compare the (Imperial) Slander of Women Act, 1891 (54 & 55 Vict. c. 51).

10. NORTH-WEST TERRITORIES.[1]

[*Contributed by A. Pulling, Esq.*]

Ordinances passed, 36.

Commissioners. Ord. No. 2 gives the Lieutenant-Governor a general power to appoint commissioners for the purpose of inquiring into and reporting on any matter within the jurisdiction of the Legislative Assembly, and connected with the good government of the territories or the conduct of the public business thereof. The commissioners may be given the same power of compelling witnesses to attend and give evidence as may be exercised by any court of record in civil cases.

Judicial procedure. No. 7 amends the Judicature Ordinance, which appears to embody a code of rules of judicial procedure for the territories.

Bills of sale. The Bills of Sale Ordinance (No. 8) applies to the territories provisions, similar to those contained in the English Bills of Sale Acts. A bill of sale is called a chattel mortgage. Mortgages on growing crops are declared to be void, except so far as they are security for the purchase price of seed grain (s. 25).

Legal profession. No. 9 regulates the legal profession for the territories. All persons entitled to practise, whether as barristers or solicitors, are called advocates, and are enrolled as such. Barristers, attorneys, advocates, and solicitors from the United Kingdom or from other British possessions may be enrolled as advocates on production of a certificate from a judge of the Supreme Court, to the effect that they are fit and proper persons and are entitled to be enrolled. There is a board of examiners for the admission of advocates within the territories. The ordinance contains powers for striking advocates off the roll, and provisions as to the taxation of costs.

Legislative Assembly. No. 11 regulates the constitution of the Legislative Assembly. It is to consist of twenty-nine elected members, one for each electoral district. Ten are to be a quorum. A member may vacate his seat by declaring his intention from his place or by written resignation to the Speaker or two other members. Each member gets an allowance of $500 for each session and his actual travelling expenses.

Audit of public accounts. Under the Audit Ordinance (No. 13) the Lieutenant-Governor in Council is empowered to appoint a "territorial auditor," who is to hold office during good behaviour, and to be removable by the Lieutenant-

[1] The Session extended from August 29 to September 30.

NORTH-WEST TERRITORIES.

Governor on address of the Legislative Assembly. His duties are to examine, check, and audit all accounts of receipts and expenditure of public money, whether appertaining to the territories, or received or expended by the territories on account of or in trust for any other persons. He is to examine the books of departments, and is to see that no cheque issues for the payment of public money for which there is no direct appropriation, or which is in excess of any appropriation. He is also to prepare and deliver to the Lieutenant-Governor in Council the public accounts to be annually laid before the Legislature for each financial year, which is to run from the 1st of September to the 31st of August.

It will be seen that the functions of the territorial auditor correspond in some respects to those of the Comptroller and Auditor-General in England.

Fire accidents.

No. 16 empowers any magistrate to hold an inquiry into the cause or origin of any fire by which any building has been wholly or partly consumed, where there is reasonable suspicion that the fire was the result of culpable or negligent conduct or design, or occurred under such circumstances as, in the interests of justice or for the due protection of property, require investigation.

Local government.

The Village Ordinance (No. 17) contains a scheme of local government for rural districts in newly settled territories. A village is defined to mean any portion of land, not being within a municipality, and not exceeding 320 acres, on which not less than ten dwelling-houses have been erected for residence. The Lieutenant-Governor in Council may, unless there is local objection, declare any such area to be a village. Thereupon a meeting of the voters is to be called for the election of an overseer. All village meetings are to be held at 2 p.m., and may not be held on any Sunday or statutory holiday. The powers of the meeting are—

(1) To decide the rate of assessment for the ensuing year, such rate not to exceed a rate of ten mills on the dollar;

(2) To decide whether, and to what extent, improvement of streets, construction of sidewalks, or other public works are to be undertaken;

(3) To decide whether or not animals are to be allowed to run at large within the village;

(4) To decide regarding the securing of appliances, and a water supply for fire protection purposes;

(5) To decide whether dogs are to be taxed or not, and, if taxed, the rates;

(6) To decide as to the purchase or lease of a refuse ground.

NORTH-WEST TERRITORIES.

The overseer is the village officer. He calls meetings and carries out their resolutions. He gives security for the performance of his duties. He is not to incur any indebtedness on behalf of the village beyond the sum of 100. He holds office for two years. It is his duty to assess a tax on all ratepayers and owners or occupants of real or personal property in the village area, and to expend the money so collected in improving the roads and for fire protection, and otherwise in carrying out the provisions of the Ordinance. The rate of assessment is fixed by the village meeting, but no male person over eighteen residing within the village is to be assessed to a less tax than $1. The overseer is paid $50 per annum, and 2½ per cent. on all moneys passing through his hands on account of the district.

The Ordinance contains regulations with respect to the use and storage of coal, oil, kerosene, gunpowder, hay, and straw within the village; the disposal of refuse and garbage; the keeping of swine; and the filling up of noisome or dangerous excavations.

Statute labour.

No. 19 empowers the Lieutenant-Governor and Council to constitute labour and fire districts. These districts appear to be areas of local government like villages, but are not to include any village. Their officer, like the village officer, is called an overseer. The overseer is to make out a list of persons required to perform or supply work on the highways and roads, and for fire district purposes, or to pay a money commutation. Every male resident over eighteen and under sixty not otherwise assessed, and having resided for the three months preceding assessment in the district, is to be assessed to one day's work, and the owner or occupant of land in the district is to be assessed to two days' work for every 160 acres. Every person is to work the whole number of days for which he is assessed, but he may commute his work at the rate of a dollar a day. If he does not commute he may appear in person or by an able-bodied man as a substitute, but he or his substitute must, subject to the orders of the overseer, actually work eight hours in each day for which he is assessed.

Threshers' liens.

No. 24 gives threshers a lien for their remuneration on the grain threshed by them.

Master and servant.

Under Ord. No. 26, respecting masters and servants, any contract or hire of personal service, if for more than one year, is to be in writing. Any person engaged, bound, or hired, whether as clerk, journeyman, apprentice, servant, labourer, or otherwise, if guilty of drunkenness or of absenting himself without leave from his employment, or of refusing or neglecting to perform his just duties, or to obey the lawful commands of his master, or of dissipating his employer's property

or effects, is to be deemed guilty of a violation of his contract, and is liable on summary conviction to fine and imprisonment. *NORTH-WEST TERRITORIES.*

Ord. No. 32 provides for the incorporation of certain Catholic parishes and missions. **Parishes.**

X. WEST INDIES.

1. BAHAMAS.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Acts passed, 35.

ACT 3 authorizes the publication of an Official Gazette, which is to be evidence of Government notices. **Official Gazette.**

Act 6 makes real estates of deceased persons liable to execution for payment of their debts. It is expressed to be an Act for the continuance of the provisions of 5 Geo. 2, c. 7, which was repealed by the Statute Law Revision Act, 1887.[2] **Lands of deceased debtors.**

Act 12 amends a previous Married Woman's Property Act of 1884. It adopts the Married Women's Property (Imperial) Act, 1893, and further provides that a married woman may convey real estate possessed by her as separate property to her husband, and that the husband may convey real estate to his wife alone, or jointly with another. **Married women's property.**

Act 24 regulates the mode of dealing with Admiralty fees. It requires the registrar of the Colonial Court of Admiralty to collect the fees receivable by the judge, registrar, and marshal, and pay them into the public treasury. Provision is, however, made for vested interests, the Governor being empowered by warrant to pay equivalent sums to the existing officers of the court. **Admiralty fees.**

Act 26 imposes penalties on persons so carelessly using fire as to cause destruction to woods and other property, whether public or private. **Fires caused by negligence.**

Act 28 amends the law relating to public burial-grounds, and empowers local commissioners of public works to lay out public burial-grounds in parcels, and sell the same in fee simple at fixed prices as places of interment for the owners thereof, and proceeds of such sales to be applied in keeping the burial-place in order. **Burial grounds.**

Act 29 adopts the Imperial (Uniforms) Act, 57 & 58 Vict. c. 45. **Uniforms.**

[1] The session 58 Vict. ended in June, 1895.

[2] It seems not to have been observed that this repeal extended only to the United Kingdom, and left the operation of the Act in the colony unaffected.

BAHAMAS.

Official salaries. Act 32 prospectively reduces the salaries and emoluments of the chief justice and certain other colonial officials.

Church of England superannuation. Act 33 enables clergymen of the Church of England, receiving pay from the public treasury, to retire on a superannuation allowance without medical certificate under the age of sixty, provided a petition in favour of retirement be addressed to the Governor in Council by a majority of the members of the congregation throughout the parish.

2. BARBADOS.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Acts passed, 28.

Waterworks transfer and maintenance. Acts Nos. 2 and 3 provide for the transfer of the works of the Bridgetown Waterworks Company to the Government of Barbados, and for the establishment and maintenance of the waterworks, which are to be under the control of the Executive Committee, and to be managed by a special waterworks department.

Judgment debtors. Act No. 7 defines the liability of defendants under special judgments confessed or entered up in the Court of Common Pleas in the island.

Traders' licences. Act No. 8 regulates the sale of goods by transient traders who come to the island temporarily, and are not assessed or rated in respect of trade by the local vestries. Such traders are required to take out a licence, and their names are to be published in the official *Gazette*.

Sale of goods. Act No. 9 (Sale of Goods Act) adopts the Imperial Act of 1893, omitting, however, the provisions of the Imperial Act which embody the Statute of Frauds, and as to sale in market overt.

The Act also adopts s. 59 of the Imperial Act, which is limited therein to Scotland, whereby the court has power, in an action by the seller, to order the buyer who had elected to accept goods which he might have rejected, and treat the breach as only giving rise to a claim for damages, to pay into court the price of the goods, or part thereof, or give security for payment.

Substituted service. Act No. 13 regulates proceedings in default of appearance by a defendant, and provides in certain cases for substituted service, either within or outside the jurisdiction of the court, upon application supported by evidence on oath as to the grounds of the application and probable whereabouts of the defendant.

Uniforms. Act No. 14 adopts the Uniforms Act, 1894, of the Imperial Legislature.

[1] The session 58 Vict. ended in December, 1895.

BARBADOS.

Act No. 20 enacts that on the death of any person whose property in Barbados would be liable to a duty in England under the Finance Act, 1894, a duty called "estate duty" shall be payable for the benefit of the island revenue in respect of property in the island. The amount of such duty is to be the same as would be payable in England under the Finance Act but for the passing of this local Act, and the application to the island of s. 20 of the Finance Act. Such duty is to be payable in respect of the same property, and under like circumstances and subject to similar conditions as estate duty would be payable in England under the Finance Act, 1894. A statement as to property liable to such duty is to be delivered within six months after date of deceased persons death, and the duty to be then paid.

Estate duty.

3. BERMUDA.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Acts passed, 27.

Act No. 11 (the Interpreters Act) enables a Court of Justice to obtain the services of an interpreter in criminal cases.

Interpreters in criminal cases.

Act No. 23 enacts that sentence for felony on persons already imprisoned for any other crime or offence may be awarded by the court to commence at the expiration of the then existing term of imprisonment.

Criminal law amendment.

It also enables the court, on conviction for perjury or forgery, to impose a sentence of hard labour for the whole or part of the term of imprisonment.

Act No. 24 makes provision for a new index to the Acts of the Legislature, and a chronological table of all Acts of the Legislature with references to repeals and amendments.

Index to Acts.

Act No. 25 (the Schools Act, 1895), constitutes a board of education, consisting of the Governor and six to nine other persons appointed by him, and enables the Governor to appoint an inspector of schools, and provides money for the maintenance of schools. The Bible is to be a daily class book in every school receiving aid under the Act, and no child is to be excluded on account of his religious denomination.

Education.

[1] The session 58 Vict. ended in December, 1895.

4. BRITISH GUIANA.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Ordinances passed, 12.

Shipping. Ord. No. 2 provides for the better prevention of shipping casualities, and appoints inspectors of shipping. It imposes restrictions on overloading, and provides for the survey of ships and the detention of unseaworthy ships.

Statute law revision. Ord. No. 12 further promotes the revision of the Statute laws of the colony.

5. BRITISH HONDURAS.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Ordinances passed, 23.

Her Majesty's navy. Ord. No. 2 allows to officers of her Majesty's navy, serving on the station, a drawback of all duties paid on spirits, wines, and other alcoholic liquor purchased for consumption by the officers or officer's mess.

Public health. Ord. No. 7 amends Public Health Ordinance of 1894 by giving powers to the Local Board of Health enabling them to purify or, if necessary, close all wells used for drinking purposes, the water of which is certified as impure by a health officer.

Police. Ord. No. 10 vests power in the Governor for the appointment of a superintendent of police and a sufficient number of officers, and regulates the enrolment of constables and defines the powers, duties, pay, numbers and other matters relating to the organization and control of the force.

Circuit justices. Ord. No. 11 enables the Governor to appoint any justice to act as circuit justice in any of the districts in which the colony is divided, with a certain defined jurisdiction.

Riots. Compensation for damages. Ord. No. 16 enacts that where a house, shop, or building, or property therein, has been damaged by persons riotously assembled together, compensation, to be fixed in manner provided by the Ordinance, shall be paid to the person whose claim for compensation has been made out to the satisfaction of the Governor in Council. The claimant of compensation in the event of dissatisfaction with the award

[2] The session 58 Vict. ended in December, 1895.

of the Governor in Council has power to bring an action against the Attorney-General to recover the compensation, and all compensation authorized or recovered is to be paid out of the general revenue of the colony. *BRITISH HONDURAS.*

Ord. No. 22 establishes a Police Reward Fund, and orders that all fines and penalties imposed upon, or awarded to any member of the police force shall be paid over to the Reward Fund for distribution in gratuities to members of the force as the Governor in Council, on the recommendation of the superintendent of police, may direct, or for application for the general benefit of the force as the Governor in Council may direct. **Police rewards.**

Ord. No. 23 follows the Uniforms Act, 1894. **Uniforms.**

6. JAMAICA.

[*Contributed by A. Gray, Esq.*]

Laws passed, 27.

Of the Statutes, or "Laws" as they are described in the colony, passed during the session of 1895, nine appear to be of more than local interest.

Law 3 alters the arrangements for payment of the Governor's salary during his absence from the island. He is to receive, during such absence, half salary only, except when absent— **Governor's salary.**

(*a*) On official visits of dependencies of Jamaica;

(*b*) On short vacation leave not exceeding six weeks in the year; or

(*c*) On visits to other West Indian colonies, for the purpose of studying questions affecting Jamaica.

During such absences as are here excepted, he is to draw full salary. The officer administering the government is to draw half the salary when the Governor is on half salary.

Law 4 enacts, with alterations necessary for the colony, the provisions of the Bankers' Book Evidence Act, 1879 (42 & 43 Vict. c. 11). **Bankers' books.**

The Debenture Law, 1895 (Law 5), is a Clauses Act containing provisions which are to be applicable to debentures issued for colonial loans under any "special law," whether the money is raised in Jamaica or in England. The law contains in a handy form all the usual provisions as to form, issue, and registration of debentures, interest, redemption, and payment off. It would have been well if a similar **Debentures.**

JAMAICA.

Act had been passed in England with respect to East Indian Loans. The English Statute Book is still encumbered with some dozen Acts, passed between 1859 and 1885, containing almost identical terms as to bonds issued for those loans.

Public holidays. The Public General Holidays' Law, 1895 (Law 11), supersedes and repeals previous legislation as to public holidays. The provisions follow generally the Bank Holidays' Act, 1871 (34 & 35 Vict. c. 17), but comprise a new clause rendering void any general contract by clerks or servants not to claim or observe any Public General Holiday, though it is still lawful for any such person "on the approach of any Public General Holiday" to forego his right to it, and to continue in service.

Sale of goods. The Sale of Goods Law, 1895 (Law 12), is an enactment for colonial use of the Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).

Married women's property. Law 14, as to Married Women's Property, amends Law 21 of 1886 and adopts the provisions of the last English Law on the subject (56 & 57 Vict. c. 63).

Jury law. The Jury Laws are amended by Law 22, which authorizes the presiding judge to allow jurors, trying a criminal cause, at any time before verdict to procure reasonable refreshment. Such refreshment is to be procured at the jurors' own cost, unless the judge otherwise orders. If such an order is made the expenses are to be paid out of moneys voted for the payment of witnesses' expenses.

Coroners' inquests. The same law amends the laws of coroners by providing that coroners' inquests may be taken and held before a jury of not less than seven and not more than thirteen persons, of whom seven at least must concur to give a verdict.

Uniforms. The Uniforms Law, 1895 (Law 24), follows the British Act of 1895 (57 & 58 Vict. c. 45.)

Tramways. The Tramways Law, 1895 (Law 27), is an adaptation for the use of Jamaica of the Tramways Act, 1870 (33 & 34 Vict. c. 78.) For the procedure by provisional order, is substituted procedure by licence granted by the Governor in Privy Council, and for "promoters" are substituted the "licensees." The points in which the colonial law varies from the British are not such as to call for special remark.

7. LEEWARD ISLANDS.[1]

(1) ANTIGUA.

[*Contributed by W. P. B. Shepheard, Esq.*]

Acts passed, 22.

Act No. 1 makes various provisions respecting the two Government schools for boys at Skerret, and for girls at Scott's Hill. **Education.**

Act No. 3 provides for the preservation of water-courses, streams, and ponds, and for the conservation of water. **Water-courses, etc.**

Act No. 4 contains various provisions and powers for the prevention of smuggling, both on land and within the territorial waters of the presidency. **Smuggling.**

Act No. 5 constitutes an Agricultural College Board, with powers to appoint lecturers and teachers at the agricultural college, and grant diplomas and certificates of competency. The Act also empowers the Governor to establish and maintain workshops for technical instruction in handicrafts, and further appropriates £1000 a year from the general revenue for the purpose of the Act. **Technical instruction.**

Act No. 6 constitutes a telephone board to control and manage the Government telephone system in the island. **Telephones.**

Act No. 12 constitutes a board of water commissioners, and contains various powers and provisions for the supply of water throughout the colony. **Water supply.**

Act No. 17 requires all dealers in logwood to be licensed. **Logwood.**

Act No. 20 provides for the notification to district medical officers of all persons suffering from infectious diseases as defined by this Act. **Infectious diseases.**

(2) DOMINICA.

[*Contributed by W. P. B. Shepheard, Esq.*]

Acts passed, 11.

Act No. 1 contains provisions for the better preservation of the peace by prohibiting in public places persons in masks, the carrying of lighted torches, the beating of drums, etc., dances or processions, and assemblages of persons over ten armed with sticks. **Peace preservation.**

Act No. 4 amends the constitution in the following points, viz.— **Constitution Act.**

(*a*) The Legislative Assembly is to consist of fourteen members, of whom seven are appointed by the Governor and seven

[1] The central legislature of the Leeward Islands passed only one Act, the legislature of St. Christopher and Nevis passed nine Acts; that of Montserrat passed three Ordinances; but none of these are of more than local interest.

LEEWARD ISLANDS.

members are to be elected. The Attorney-General of the Leeward Islands is to be a member *ex officio:* and not more than two out of the three public officers included in the seven members appointed by the Governor are to take their seats at any meeting at which the Attorney-General is present.

(*b*) All members must take the oath of allegiance.

(*c*) No money, bill, or resolution charging the revenues is to be introduced, except by authority of the Governor of the Leeward Islands.

(*d*) The administrator is to preside, and all questions are to be decided by a majority of votes, the chairman having a casting vote.

(*e*) A quorum is to consist of at least seven members, and the Assembly is to meet in session in January and July, and at other time by Governor's proclamation.

Sale of butcher's meat. Act No. 9 makes the licensing of all persons carrying on the trade of butchers compulsory, and provides regulations and restrictions as to the slaughter of animals and sale of butcher's meat, with penalties for the sale of unwholesome meat.

8. TRINIDAD AND TOBAGO.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Ordinances passed, 47.

Dogs. Ord. No. 7 provide for the licensing of dogs, and establishes police precautions against the spread of hydrophobia.

Post-office. Ord. No. 8 enables the Postmaster-General of the colony to detain as a prohibited article letters or packets bearing fictitious stamps.

Immigrants. Ord. No. 11 makes provisions to restrict the landing in the colony of criminal and vicious immigrants.

Uniforms. Ord. No. 12 enacts the Uniforms (Imperial) Act of 1894.

Agricultural manures and food stuff. Ord. No. 19 provides protection to purchasers by way of warranty on the sale of agricultural fertilizers and feeding stuffs, with penalties on sellers for breach of provisions and power for the Governor to appoint public analysts.

Hospitals. Ord. No. 24 gives power to the Governor and Legislative Council for the establishment, maintenance, and management of hospitals, asylums, and other institutions for the relief of the sick and destitute.

Wild birds and game. Ord. No. 25 contains provisions for the protection of certain wild

[1] The session 58 Vict. ended in December, 1895.

birds and ground game, with power of arrest and imprisonment of offenders.

Ord. No. 28 enables the Governor of the colony, with the permission of the Secretary of State, to take leave of absence on full pay for the purpose of visiting in the public interest other British West Indian Colonies. **Governor's leave of absence.**

Ord. No. 29 contains provisions for the safe storage of petroleum, and regulating the sale through the grant of licences, with powers enabling the police to do all things necessary to enforce the provisions of the Act. **Petroleum.**

Ord. No. 32 provides against the sale of unsound food and the adulteration of food and drugs, and contains powers enabling the police, medical officers, and other public functionaries to obtain samples for analysis, and various other provisions for carrying the law against the adulteration of food and drugs into effect. **Adulteration of food and drugs.**

Ord. No. 37 codifies the law relating to the Sale of Goods by adopting, with slight variation, the Imperial Act of 1893. **Sale of goods.**

Ord. No. 44 (the Real Property Act, 1895) amends and consolidates the law relating to the registration of titles to land. It provides for the compulsory registration of all unalienated Crown lands upon their alienation in fee, and for the permissive registration of Crown lands already alienated and other lands within the colony. **Real property and registration of titles.**

9. WINDWARD ISLANDS.

(1) GRENADA.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Ordinances passed, 19.

Ord. No. 1 is a lunacy law in similar terms to those of St. Lucia and St. Vincent. **Lunatics.**

Ord. No. 4 empowers the Governor to constitute a General Board of Health, and appoint local authorities for the purpose of the Ordinance, with provisions for securing the sanitary superintendence of towns and villages. **Public health.**

Ord. No. 6 is a quarantine law with the usual provisions. **Quarantine.**

Ord. No. 7 enacts that consent shall be no defence to a charge of indecent assault on any person under thirteen years of age. **Criminal law.**

Ord. No. 10 contains provisions for the prevention of the pollution of streams, and appoints conservators. **Rivers pollution.**

Ord. No. 12 constitutes a Board of Education consisting of the **Primary education.**

[1] The session 58 Vict. ended in December, 1895.

WINDWARD ISLANDS.

Governor as president, and of so many members as the Governor shall appoint, of whom one half shall be Roman Catholics and one half "non-Roman" Catholics. To the Governor is given power to appoint inspectors of schools and the secretary to the board.

The board have powers vested in them for making rules and regulations for the good government, discipline, and routine work of all Government and other schools maintained or aided under the Ordinance.

Other powers and provisions as to visiting the schools, and the conditions as to capitation and building grants, are contained in the Ordinance.

Uniforms. Ord. No. 14 follows the Uniforms Act, 1894.

(2) ST. LUCIA.[1]

[*Contributed by W. P. B. Shepheard, Esq.*]

Ordinances passed, 13.

Plants and seed disease. No. 5 enables the Governor by proclamation to prohibit the importation of plants, seeds, berries, and other products affected with any disease, or likely to engender disease in plants in the colony, with powers for enforcing the provisions of the Ordinance.

Cocoa and nutmeg traders. No. 7 compels dealers in cocoa and nutmegs to take out a licence.

Lunatics. No. 8 provides for the adjudication of persons in lunacy and as to their custody, visitation, and treatment, with special powers for the transfer of lunatics from and to the island. This Ordinance is a useful short form of a Lunacy Act.

Quarantine. No. 9 constitutes a "Quarantine Authority" for the purpose of regulating the quarantine of vessels coming from infected ports, and confers powers on health and police officers for carrying out the provisions of the Ordinance.

(3) ST. VINCENT.[1]

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 20.

Bills of exchange. Ord. No. 3 enacts for the colony the Imperial Act (45 & 46 Vict. c. 61).

Quarantine. No. 6 is a quarantine law in the usual form.

Criminal law. No. 7 enacts that it shall be no defence to a charge of indecent assault on a young person under thirteen to prove his or her consent.

Lunatics. No. 8 is a lunacy law in much the same form as the St. Lucia Ordinance.

[1] The session 58 Vict. ended in December, 1895.

WINDWARD ISLANDS.

No. 12 amends the existing Land Tax Ordinance, and imposes a land tax on all lands in the island of St. Vincent held by one person and exceeding twenty acres of 9*d.* per acre; and under twenty acres, 6*d.* per acre; and on all lands in the Grenadines, 3*d.* per acre. **Land tax.**

Ord. No. 14 makes provision for the preparation and publication of a new and revised edition of Statute law of this colony.[1] **Statute law revision.**

The powers taken are of considerable interest. The Attorney-General is appointed sole commissioner to carry out the revision. He has power to omit all Ordinances which are expressly repealed, or have become spent; all repealing enactments and tables of lists of repealed enactments; all preambles (where convenient); all introductory words of enactment in sections; enactments prescribing the date when an Ordinance is to come into operation; amending Ordinances when the amendments are embodied by the commissioner in the principal Act.

He may consolidate into one Ordinance any number of Ordinances *in pari materiâ*, "making the alterations thereby rendered necessary;" he may alter the order and form of sections; transfer an enactment from one Ordinance to another; divide an Ordinance into parts or other divisions; add short titles when required; shorten and simplify the phraseology of any enactment; do other things relating to form and method which may be necessary for the perfecting of the new edition.

His powers are not, however, to be taken as authorizing him to make any alteration or amendment in substance. When amendment in substance is necessary, he is to draft a Bill for submission to the Legislative Council in the usual way.

When the new edition is prepared it is to be printed, and each copy is to be impressed with the great seal of the colony, and after proclamation the new edition "shall be deemed to be and shall be without any question whatsoever in all courts of justice the sole and only proper Statute Book of this colony up to the date of the latest of the Ordinances contained therein."

Ord. No. 15 follows the Uniforms Act, 1894. **Uniforms.**

Ord. No. 19 empowers the Governor to prohibit the importation of plants, seeds, etc., likely to be the means of communicating disease to plants in the colony. **Diseased plants, seeds, etc.**

[1] This Ordinance is adapted from the British Guiana Ordinance of 1894 (No. 1 of 1894).

MODES OF LEGISLATION IN THE BRITISH COLONIES.

In August, 1895, Lord Herschell, the President of the Society, in a letter to Mr. Chamberlain, Secretary of State for the Colonies, enclosed a series of questions by means of which it was sought to obtain information respecting the common and Statute law of the several colonies, the methods of legislation, the publication, revision, and consolidation of Statute law, and matters connected therewith.

These questions were transmitted by Mr. Chamberlain to the respective Colonial Governments.

It has been thought expedient to publish the replies which have up to the present been received, and it is hoped that the Colonial Governments which have not yet responded to the invitation will forward their replies in time for insertion in the next number of the Journal.

The questions addressed to the Colonial Governments were as follows:—

QUESTIONS WITH RESPECT TO THE STATUTE LAW OF THE BRITISH COLONIES.

I.—Common Law as the Basis of Statute Law.

(*a*) What is the common law of the colony? Under what circumstances and by whose authority was it introduced?

(*b*) Is there any law applying exclusively to particular races or creeds?

II.—Statute Law.

(*a*) Of what does the statutory or enacted law of the colony consist? To what extent is it embodied in charters, regulations, Orders in Council, Ordinances, or Acts?

(*b*) To what extent do the Statutes of the United Kingdom operate in the colony by virtue of either—

(i.) Original extension of English law to the colony;
(ii.) Express provisions of any Order in Council or charter; or
(iii.) Express adoption by the legislature of colony?

(*c*) Is the Statute law of any other colony in force in the colony? (This may happen where one colony has been severed from another.)

(*d*) Is any code or other body of enacted law of non-British origin in force in the colony?

III.—Methods of Legislation.

(*a*) By whom are drafts of legislative measures prepared? Is there any official draftsman? If so, by whom is he appointed, to whom is he responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the legislative body?

(*b*) What is the constitution of the legislative chamber or chambers through which measures have to pass? (A reference to Statute law, or charter, or Order in Council, or to any recognized text-book will suffice.) If there are two chambers, may measures be introduced in either?

(*c*) Are draft measures published before introduction, or before any other stage? If so, under what rules?

(*d*) Through what stages does a measure pass before it becomes law?

(*e*) Is any opportunity afforded for referring measures, while in course of passage through the legislature, to any special officer or committee on points of form?

(*f*) Have any steps been taken to secure uniformity of language, style, or arrangement of Statutes either by means of a measure corresponding to "Brougham's" Act (13 & 14 Vict. c. 21), or to the Interpretation Act, 1889 (52 & 53 Vict. c. 63), or by official instructions or otherwise?

(*g*) Is there an annual session of the legislature? Are there any fixed or customary periods of session?

(*h*) How are the Acts or Ordinances of the colony numbered or distinguished? Are they numbered by reference to the calendar year, or to the regnal year, or in any other way? Is it the practice to confer for convenience of citation a "short title" on each Act or Ordinance? How long has this practice been followed?

(*i*) Are private Bills (if any) treated separately, and under different conditions from public Bills? On what principle is the line drawn between public and private Bills? Are private Acts or Ordinances separately numbered?

(*j*) Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum?

IV.—Publication of Statutes.

(*a*) In what manner and under what authority are Statutes promulgated? What evidence is accepted of a Statute having been duly passed?

(*b*) In what form or forms and under what authority are Statutes printed for publication?

(*c*) Are the Statutes of each session published in a collected form at the end of the session?

(*d*) Are the periodical volumes of Statutes accompanied by (1) an index and table of contents, (2) a table showing the effect on previous legislation?

(*e*) What collective editions (if any) of the Statute law of the colony have been published, and whether by the Government or by private enterprise? Are these or any of them periodical? Do such editions comprise those Acts of the United Kingdom in force in the colony?

(*f*) Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Public Utility"?

(*g*) How are private Acts published?

V.—Revision of Statutes.

(*a*) Have any steps been taken for the revision and expurgation of the Statute law, whether periodically or otherwise? What machinery, if any, exists for this purpose?

(*b*) Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition? Is it published at periodical intervals, or how otherwise? Are the contents arranged alphabetically, chronologically, or on any other principle?

VI.—Indexing of Statute Law.

Is there any general index to the Statute law of the colony? If so, on what principle is it arranged and after what interval is it revised? Does it include both public and private Acts or Ordinances, and the Statutes of the United Kingdom which are in force in the colony? Is it accompanied by any tables showing how each Statute has been dealt with? What is the date of the latest edition?

VII.—Consolidation and Codification.

(*a*) What steps have been taken to consolidate the whole or particular parts of the Statute law, or to codify any branches of the law?

(*b*) Does any machinery exist for this purpose? Is the work now in progress?

(*c*) What "codes" are now in force in the colony? When and by whom were they prepared, and on what materials were they based?

VIII.—Subordinate Legislation.

What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation, such as rules or orders made by the Governor, or a minister or department under the express authority of Statute or Ordinance? Is there any, and what collection of, or index to, such subordinate measures?

To these questions the following replies have been received by the Society:—

BRITISH BECHUANALAND.[1]

I.—Common Law.

(*a*) The common law of the territory is the Roman-Dutch law.

By a commission under the Royal Sign Manual, dated September 29, 1885, the Governor or officer for the time being administering the government of the colony of the Cape of Good Hope, is appointed Governor of the territory of British Bechuanaland, and empowered to make by proclamation such laws as might be deemed necessary for the peace, order, and good government of the said territory. In pursuance of the powers thus vested in him, the Governor by proclamation (No. 2 B. B.), dated October 6, 1885, declared the laws then in force in the colony of the Cape of Good Hope to be in force, so far as applicable, in British Bechuanaland. In this way the Roman-Dutch law, which is the common law in Cape Colony, became the common law of British Bechuanaland.

(*b*) In British Bechuanaland there is no legislation affecting exclusively particular *creeds*.

The following provisions affect specially *native races*:—

(1) Where the parties to a civil suit are natives, native law may be administered even by British courts (s. 20 of the

[1] Prepared by Dr. Ward, late Crown Prosecutor of British Bechuanaland.

BRITISH BECHUANA-LAND.

Laws and Regulations of B. B.; see vol. i. of "Collection of Proclamations," p. 7).

(2) Native chiefs have extensive civil and criminal jurisdiction over natives belonging to their respective tribes (see ss. 31 & 32 of the Laws and Regulations).

(3) Natives resident in British Bechuanaland wishing to leave the territory, and those domiciled in other states wishing to enter British Bechuanaland, must be provided with *passes* (s. 48).

(4) Where stolen cattle are traced to the neighbourhood of a native kraal, the chief or headman of such kraal is responsible, under certain circumstances, for the value of the cattle (Proclamation 31 B. B., "Proclamations," i. p. 59).

(5) Natives are liable to a hut tax of 10*s*. per annum for each hut occupied by them (Proclamation 32 B. B., "Proclamations," i. p. 62).

(6) Land allotted to natives for reserves or locations are inalienable, except with the consent of the Secretary of State (Proclamation 220 B. B., "Proclamations," vol. ii.).

(7) It is illegal to supply wine or spirituous liquor to natives.

II.—Statutes.

(*a*) The Statute law of the territory consist of proclamations (see answers to Question I. (*a*) and II. (*c*)).

(*b*) The Statutes of the United Kingdom are not in force in British Bechuanaland.

(*c*) The Statute law of the Cape Colony is in force in British Bechuanaland (see the answer to Question I. (*a*)).

(*d*) The Placaaten, formerly in force in Holland are, so far as applicable, in force in British Bechuanaland.

III.—Methods of Legislation.

(*a*) Proclamations are drafted either by the Crown Prosecutor or Legal Adviser to the High Commissioner as part of their ordinary duties.

(*b*) to (*e*) There is no legislative chamber in British Bechuanaland; laws being made by the Governor in the form of proclamations (see answer to Question I. (*a*)).

(*f*) No steps have been taken to secure uniformity of language, style, etc., in proclamations.

(*g*) There is no legislative body.

(*h*) The proclamations are numbered consecutively from their commencement in 1885. No short titles are used.

(*i*) There is no distinction whatever between Proclamations dealing with subjects of a private, and those dealing with subjects of a public nature. Only one series of numbers is employed.

(*j*) See answer to Questions (*b*) to (*e*).

IV.—Publication of Statutes.

(*a*) The proclamations are published by authority of the Governor in the Government *Gazette*.

(*b*) Publication in the *Gazette* is the only official publication.

(*c*) and (*d*) See answer to Questions III. (*b*) to (*e*).

(*e*) The proclamations have been collected in two volumes at Government expense. As in the case of the collection of the English Statutes Revised, only those proclamations which were in force at the date of publication are printed. To the second volume an index is added, and a table showing the modifications which proclamations have undergone.

(*f*) There is no edition of "Selected Statutes."

(*g*) Proclamations similar to private Acts are published in precisely the same way as other proclamations (see answers to Questions (*a*) and (*b*)).

V.—Revision of Statute Law.

(*a*) No steps have been taken for the revision, etc., of the Statute law, and no machinery exists for the purpose. When it was found desirable to modify a proclamation to any considerable extent, the usual course was to repeal the existing proclamation and issue a fresh one.

(*b*) See answer to Question IV. (*e*). The collection of proclamations there referred to was published under the authority of Government. The first volume was published in October, 1893, the second in November, 1895. The contents are arranged chronologically.

VI.—Indexing of Statute Law.

The second volume of the collection of proclamations contains a general index to the proclamations in force when it was prepared. There is also prefixed to the same volume a table showing how each proclamation has been dealt with.

VII.—Consolidation and Codification.

(*a*) No steps have been taken either to consolidate or codify the law in British Bechuanaland.

BRITISH BECHUANA-LAND.

(*b*) No machinery exists for the purpose of consolidation or codification.

(*c*) There are no codes in force.

VIII.—Subordinate Legislation.

No powers of subordinate legislation by ministers or departments exist in British Bechuanaland.

BRITISH GUIANA.[1]

I.—Common Law.

(*a*) The common law of the colony is the Roman-Dutch law. This system was introduced by the Dutch, who were the founders of the three settlements of Berbice, Demerara, and Essequebo, which at the present time, under the names of counties, constitute the colony. When these settlements were captured by the British forces in 1803, it was provided in the Articles of Capitulation that the inhabitants should continue to enjoy the laws by which they had theretofore been governed. English mercantile law has been enacted by an Ordinance.

(*b*) There are several Ordinances—the principal being the Immigration Ordinance, 1891—for the control and regulation of Asiatic immigrants, introduced under the direction of the Local Government for the purpose of working, under a system of indenture, on sugar and other plantations. There are also regulations, made under the authority of an Ordinance, for the protection of aboriginal Indians.

II.—Statute Law.

(*a*) The statutory or enacted law of the colony consists of Regulations, Orders in Council, Ordinances, and Acts of Parliament. Of these the Ordinances represent by far the largest and most important part, and, generally speaking, these only are referred to by the term "Statutes" as hereinafter used. There is, however, a considerable body of rules and regulations, made under the express authority of Ordinances, for various administrative purposes. There are at the present time only two or three Orders in Council remaining on the Statute-book, and this mode of legislation has not been employed for about fifty years. The Acts of Parliament are but few, which by their terms have been expressly made operative in the colony.

[1] Prepared by the Hon. Sir J. W. Carrington, Chief Justice of Hongkong, lately Attorney-General of British Guiana.

(*b*) The Statutes of the United Kingdom do not operate in the colony in any of the ways mentioned in this question.

(*c*) The Statute law of no other colony is in force in the colony.

(*d*) No code or other body of enacted law of non-British origin is in force in the colony.

III.—Methods of Legislation.

(*a*) There is no special official draftsman. It is part of the duties of the Attorney-General to draft and carry through the Legislative Chamber all Government measures. In practice these are almost co-extensive with measures of a public nature. A private or unofficial member has the right, with the permission of the Governor, to introduce a Bill relating to a matter of public importance; but this right is seldom or never exercised. In the case of a private Bill, the Attorney-General is expected to examine and, if necessary, to revise it, in the interests both of the Government and of the Legislative Chamber. Where a measure deals with matters falling especially within the experience of a public department or officer, the first draft is sometimes made by such department or officer and then settled by the Attorney-General.

(*b*) There are two legislative chambers, the Court of Policy and the Combined Court. The constitution of these bodies is regulated by the British Guiana Constitution Ordinance, 1891. The only measures which it is within the competence of the Combined Court to enact are the annual Tax and Customs Duties Ordinances and any Ordinances amending them, and the septennial Civil List and Clergy List Ordinances.

(*c*) By the rules and standing orders of the Court of Policy all measures introduced into the court are published immediately after introduction in the official *Gazette*. Publication is also made in a daily newspaper.

(*d*) Before it becomes law, a measure passes through the stages of first and second readings, committee of the whole court, third reading and passing, and assent of the Governor.

(*e*) The Attorney-General is responsible that due attention is paid to points of form while a measure is passing through the legislature.

(*f*) In 1891 an Interpretation Ordinance—founded on the Interpretation Act, 1889—was enacted for the purpose of securing uniformity of language, style, and arrangement of Statutes.

(*g*) The annual session both of the Court of Policy and of the Combined Court is held in the early part of each year. Two or three special or extra sessions of each chamber are held in the course of the year. The sittings of the Court of Policy during a session are

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not continuous but intermittent, usually at intervals of a week or a fortnight.

(*h*) Ordinances are numbered by reference to the calendar year. A short title is always conferred on an Ordinance. This practice has been followed for about thirty years. In the new and revised edition of the Statute laws of the colony, to which reference will presently be made, short titles have been, under express statutory authority given to the editor for that purpose, conferred upon all Ordinances included in the edition.

(*i*) Private Bills are dealt with in the same way as public Bills; the only difference being that a stamp duty of $100 is payable in respect of a private Bill, unless such duty is remitted by the Court of Policy.

(*j*) There does not exist any practice of accompanying a measure on its introduction by an explanatory memorandum.

IV.—Publication of Statutes.

(*a*) Statutes are promulgated, under the authority of the Government, by publication in the official *Gazette*. The production of a copy of a Statute purporting to be printed by the Government printer is sufficient evidence of its having been duly passed.

(*b*) Statutes are printed in quarto form by the Government printer under the authority of the Government.

(*c*) At the end of each year the Statutes passed during the year are collected and bound in volumes for the use of public departments and officers, but no other collection of the kind is made by the authority of the Government.

(*d*) The annual volumes of Statutes mentioned in the last answer are not accompanied by (1) an index and table of contents, or (2) a Table showing the effect on previous legislation.

(*e*) The following collective editions of the Statute law of the colony have been published:—

(1) An edition published in two volumes folio, during the years 1864–1870, by Mr. H. A. Firth;

(2) An edition published in seven volumes octavo—six volumes text, and one volume index—completed in 1881, by Mr. L. McDermott; and

(3) A new and revised edition, published in five volumes octavo—four volumes text, and one volume chronological table and index—published by the Government in 1894.

The publishers of editions (1) and (2) received some financial assistance from the Government in bringing out their editions.

None of the above-mentioned editions are periodical.

I believe editions (1) and (2) contained some Acts of Parliament. Edition (3) contains a table of all the more important Acts having operation in the colonies.

(*f*) There are a few editions of "Selected Statutes" in particular branches of the law; but there is no edition corresponding to Chitty's "Statutes of Practical Utility."

(*g*) Private ordinances are published in the same way as public ones.

V.—Revision of Statutes.

(*a*) Steps are from time to time taken, as the Attorney-General finds opportunity, for the revision and expurgation of the Statute law. A good deal of this work has been done in recent years. No machinery exists for the purpose.

(*b*) Edition (3) mentioned in IV. (*e*) is an edition of revised Statutes, showing those actually in force. This edition was prepared by the writer of this memorandum under the authority of the Statute Laws (Revised Edition) Ordinance, 1894. This Ordinance conferred on the compiler of the edition considerable powers in the way of consolidating Statutes, *in pari materiâ*, and of effecting revision in matters of form. The contents are arranged chronologically.

VI.—Indexing of Statute Law.

The edition mentioned in the last answer contains a general index to the Statute law of the colony. It is arranged in great part on the principle of the index to the Acts of the United Kingdom, issued by the Statute Law Committee. It includes both public and private Ordinances, but not the Statutes of the United Kingdom in force in the colony. It is accompanied by a table showing how each Statute has been dealt with.

VII.—Consolidation and Codification.

(*a*) The remarks made in V. (*a*) apply also to consolidation. In particular the criminal law, both offences and procedure, has been recently consolidated. There has been no codification beyond the enactment of the Bills of Exchange Act, 1882.

(*b*) No machinery exists for the purpose of consolidation or codification.

(*c*) No "codes" are in force in the colony.

VIII.—Subordinate Legislation.

See above II. (*a*) and III. (*a*). There is no collection of or index to measures of subordinate legislation.

GIBRALTAR.[1]

I.—Common Law.

The common law of Gibraltar is the English common law; but as was said in Jephson *v.* Riera (3 Knapp's P. C. Reports, at p. 150), "The peculiar situation and character of Gibraltar, and the circumstances consequent upon its capture, render it difficult to ascertain how and when the alteration of its laws first took place."

There is no common law applying exclusively to particular races or creeds.

II.—Statute Law.

(*a*) The Statute law consists of (1) certain of the Imperial Statutes, (2) Orders in Council, and (3) Local Ordinances.

(*b*) By Order in Council of February 2, 1884, the law of England as it existed on December 31, 1883, is brought into force so far as applicable to the circumstances of Gibraltar in matters not provided for by local enactment, and since 1890 many Statutes of the United Kingdom have been adapted by Order in Council or local Ordinance to Gibraltar.

As above indicated, the date of the original extension of English law to Gibraltar is uncertain, but its gradual application may be traced as follows:—

The first Charter of Justice, 1720, applied only to personal property.

The second Charter of Justice, 1739, extends jurisdiction, and provides that the laws of England shall be the measure of justice between the parties.

The third Charter of Justice, 1752, extends jurisdiction to criminal cases and real property.

The fourth Charter of Justice, 1817, revokes former charters, establishes a Court of Judicature, and provides for the administration, "as near as may be," of the law of England.

The fifth Charter of Justice, 1830, revokes former charters, establishes a Supreme Court, a Chief Justice, officers of the court, provides for admission of practitioners, and for trial by the Chief Justice and a jury in criminal cases, and by the Chief Justice and assessors in civil cases, and excepts members of the garrison from criminal jurisdiction unless with the consent of the Governor. It further establishes a small debt court with jurisdiction limited to £40, and inferior criminal courts, and provides for appeals to the Privy Council.

[1] Prepared by Archibald W. Fawkes, Esq., Q.C., Attorney-General.

The sixth Charter of Ecclesiastical Jurisdiction, 1832, relates to probate of wills and letters of administration.

These charters were revoked by the Supreme Court Consolidation Order, Gibraltar, 1888, under which the present Supreme Court is constituted (see "Gibraltar Laws," 1890, p. 503).

The Statute law of no other colony is in force, nor does any code or other body of enacted law of non-British origin prevail in the colony.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the Attorney-General of the colony, who is the official draftsman appointed by the Secretary of State for the colonies, and is responsible to the Governor. His staff consists of one clerk.

(*b*) There is no legislature or legislative council. The Governor has power to legislate by Ordinance with certain restrictions, and subject to a right of disallowance reserved to her Majesty.

(*c*) Under Royal instructions to the Governor drafts of Ordinances are published for one month before introduction, except in urgent cases.

(*d*), (*e*) The Ordinances do not go through any stage in public session; they are merely published in the official *Gazette* after being approved by her Majesty.

(*f*) Provision is made for uniformity of language by the Royal instructions to the Governor, and by an Interpretation Order in Council, Gibraltar, 1888.

(*g*) There are no annual session or fixed periods of legislation.

(*h*) The Ordinances are distinguished by titles and by consecutive numbers commencing in each successive calendar year with the number one, and they are divided into successive clauses consecutively numbered, and have thereto a marginal summary of contents.

It is usual to confer on each Ordinance a "short title" for citation.

This practice prevailed for some considerable time previous to the consolidation of the laws in 1890.

(*i*) There are no private Bills.

(*j*) When necessary an explanatory report is forwarded with the draft by the Attorney-General for the Governor; but this report is not for public information.

IV.—Publication of Statutes.

(*a*) Promulgation of Ordinances is effected by publication in the official *Gazette* by authority of the Governor, and by the enrolment of a duly authenticated transcript of the Ordinance in the Supreme Court.

GIBRALTAR.

The official *Gazette* containing an Ordinance is accepted as evidence of its having been duly passed.

(*b*) Ordinances are printed for publication under the authority of the Governor.

(*c*), (*d*) No periodical volumes of Statutes are prepared.

(*e*) In 1890 the laws were consolidated by the Government.

(*f*) There is no edition of "Selected Ordinances."

(*g*) There are no private Acts.

V.—Revision of Statutes.

(*a*) As above indicated, the laws were revised and consolidated in 1890, but not again since that year.

VI.—Indexing of Statute Law.

The only index to the laws in force is that attached to the "Book of Consolidated Laws, 1890." It includes Orders in Council and Ordinances, but not any Statutes of the United Kingdom. The same book contains tables showing how each enactment from 1815 to 1890 has been dealt with.

VII.—Consolidation and Codification.

Besides the consolidation of the Gibraltar laws, 1890, several Imperial Statutes consolidating English Statute law, and codifying branches of the law, have since 1890 been adapted to Gibraltar by local enactment, viz.—The Factors Act, 1889; the Arbitration Act, 1889; the Partnership Act, 1890; the Trustee Acts, 1893 and 1894; the Sale of Goods Act, 1894.

No codes have been introduced.

VIII.—Subordinate Legislation.

Rules made under statutory authority are usually drafted by the Attorney-General and submitted to the Governor. A collection and index of rules made under the authority of enactments in force in Gibraltar has been prepared privately by Mr. Cole, the present police magistrate, but has not been published.

GOLD COAST.[1]

[In this paper Ordinances are cited according to local practice: thus "14 $\frac{1}{76}$" means s. 14 of Ordinance 4 of 1876.]

I.—Common Law.

(*a*) The common law in the colony is that which was common in England on July 24, 1874 (14 $\frac{4}{76}$). This enactment is modified by

[1] Prepared by Sir W. Brandford Griffith, Chief Justice of the Gold Coast.

ss. 7, 12, 13 of the Criminal Code ($\frac{12}{92}$), with respect to Acts which are offences under that code.

(*b*) By 19 $\frac{4}{76}$ native law and custom "not being repugnant to natural justice," etc., is applicable in suits between natives. Native custom is also to prevail in relation to marriage, the tenure of real and personal property, and inheritance and testamentary disposition; also, in causes between Europeans and natives, where strict adherence to English law would effect injustice.

The Native Jurisdiction Ordinance ($\frac{5}{83}$) applies exclusively to natives. It regulates the jurisdiction to be exercised by the native chiefs.

II.—Statute Law.

(*a*) The Statute law of the Gold Coast colony consists of—

1. One Ordinance of the settlements on the Gold Coast.
2. Ordinances of the Gold Coast colony.
3. The Order in Council permitting appeal to the Privy Council.

(*b*) No Statutes of the United Kingdom operate in this colony by virtue of (i.) or (ii.).

(iii.) The doctrines of equity and Statutes of general application which were in force in Gold Coast colony (14 $\frac{4}{76}$).

The jurisdiction in probate, divorce, and matrimonial causes is to be exercised in conformity with English law and practice for the time being (16 $\frac{4}{76}$). But Imperial Acts, as above-mentioned, are only to apply subject to local Ordinances (17 $\frac{4}{76}$).

The Imperial law with respect to treason, treason-felony, and misprision of treason, applies to the colony (318, 319 $\frac{12}{92}$). Also the Imperial law as to piracy (331 $\frac{12}{92}$).

By $\frac{1}{93}$ twenty of the most important of the Imperial Criminal Statutes are declared not to be in force in the colony.

By the effect of ss. 12 and 13 of the criminal code ($\frac{12}{92}$) various Imperial Statutes are excluded from operation in the colony.

(*c*) The Statute law of no other colony is in force in the Gold Coast colony.

(*d*) There is no code or other body of enacted law of non-British origin in force in the colony. The criminal code does not come under this heading.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the law officers, viz. the Attorney-General and the Solicitor-General.

There is no official draftsman.

(*b*) The Legislative Council is composed of the Governor, the Chief

GOLD COAST. Justice, the Colonial Secretary, the Attorney-General, the Treasurer, and the Inspector-General of Constabulary, and such unofficial members as her Majesty may be pleased to appoint.

The constitution of the Legislative Council is provided for in the instructions to the Governor.

(*c*) Draft measures are usually published in the *Gazette* after a first reading, under Rule 41 of the standing rules and orders of the Legislative Council.

(*d*) A measure is read a first, second, and third time, and when passed by the Legislative Council must be assented to by the Governor before it becomes law.

(*e*) A measure could be referred to a special committee on points of form, but such a course is unusual.

(*f*) Steps have been taken to secure uniformity of language by the Interpretation Ordinance ($\frac{3}{76}$), as amended by $\frac{3}{95}$.

By the Standing Orders and Rules of the Legislative Council provision is made that the enacting words in Ordinances shall be "enacted by the Governor of the Gold Coast colony, with the advice and consent of the Legislative Council thereof."

(*g*) There is no annual session of the Legislature. There are no fixed or customary periods of session.

(*h*) Ordinances are distinguished by number and the calendar year.

They are numbered in the order in which they receive the Governor's assent.

It is the practice to confer a "short title" on each Ordinance.

The practice has been followed since 1874.

(*i*) Private Bills are not treated separately.

Notification of private Bills is required under Rule 52 of the Standing Orders and Rules of the Legislative Council, and they are printed at the expense of the parties interested.

No principle has been laid down as to the line between private and public Ordinances. Private Ordinances are not numbered separately.

(*j*) A measure is sometimes accompanied by an explanatory memorandum.

There is no settled practice on the point.

IV.—Publication of Statutes.

(*a*) Ordinances are promulgated by being published in the *Gazette*. There is no statutory provision as to such promulgation.

Rule II. of Order 6 of Schedule 1 of the Supreme Court Ordinance ($\frac{4}{76}$) provides that various facts appearing in the *Gazette* shall be *primâ facie* evidence.

Provision is made by the Authentification of Ordinances Ordinance ($\frac{6}{78}$), for the record of Ordinances passed.

By s. 6 of the last-mentioned Ordinance a proclamation in the *Gazette* of her Majesty's allowance or disallowance, is *primâ facie* evidence.

(*b*) Ordinances are printed for publication on foolscap sheets, sewn together when occupying more than one sheet.

The only statutory authority for printing Ordinances is contained in $\frac{6}{78}$ above mentioned.

(*c*) The Ordinances of each year are published in a collected form at the end of the year, in accordance with the instructions to the Governor.

(*d*) The said yearly volume of collected Ordinances is not accompanied by (1) an index or table of contents, nor (2) a table showing effect on previous legislation.

(*e*) The collective editions of the Statute law of the colony are—

(1) "Ordinances, etc., relating to her Majesty's Forts and Settlements on the Gold Coast," published by the Government in 1860.

This edition is practically of no value. All the Ordinances therein have been repealed.

(2) "Ordinances of the Settlements of the Gold Coast Royal Charters, Acts of Parliament, Orders in Council, Treaties of the Government of the Gold Coast with Native Chiefs," etc., compiled by Algernon Montague, and published by the Government in 1874.

All the Ordinances contained in this edition, with one exception, have been repealed.

(3) "Ordinances of the Settlements on the Gold Coast, and of the Gold Coast Colony in force April 7, 1887," compiled by W. Brandford Griffith, and published by the Government (London : Waterlow & Sons).

Montague's edition contains some of the Imperial Acts in force in the colony at the date of publication.

(*f*) There is no edition of "Selected Statutes" in the colony.

(*g*) Private Ordinances are published in the same manner as public Ordinances.

V.—Revision of Statutes.

(*a*) Steps have been taken, at irregular periods, for the revision and expurgation of the Statute law. No special machinery exists for the purpose.

(*b*) The only edition of "Revised Statutes" showing those actually in

GOLD COAST. force is Griffith's edition of 1887, above mentioned. It was prepared at the request of the Government, on the initiation of the compiler, and published by the Government. It was not prepared under any statutory authority, but has been generally adopted by the Government, the courts, and the profession.

There is only one edition, viz. that of 1887. The contents are arranged chronologically.

Provision was made by $\frac{9}{94}$, amended by $24\frac{3}{95}$, for a collected and revised edition of the Ordinances, and various Ordinances have been amended for that purpose, but nothing further has been done as yet in the matter.

VI.—Indexing of Statute Law.

A general index to the Ordinances is contained at the end of Griffith's edition. It includes private and public Ordinances, but does not include Acts of Parliament in force in the colony. It is not accompanied by tables showing how each Statute has been dealt with.

Since then Mr. Stanley W. Morgan, Chief Registrar of the Supreme Court, has compiled "A Chronological Table and Alphabetical Index of the Ordinances of the Gold Coast Colony." It is published by Messrs. Waterlow & Sons, London, 1895.

VII.—Consolidation and Codification.

(*a*) The Supreme Court Ordinance ($\frac{4}{76}$) is practically a civil procedure code.

Ordinance $\frac{5}{76}$ is practically a criminal procedure code.

The Criminal Code ($\frac{12}{94}$) codifies the law with respect to punishment for crime.

The Towns Ordinance ($\frac{13}{92}$) consolidates the law as to public health.

The Bills of Exchange Ordinance codifies the law as to bills of exchange.

(*b*) No special machinery exists for the purpose of consolidating or codifying Ordinances.

(*c*) The Criminal Procedure Code was prepared by Sir Joseph Hutchinson, and is based on the St. Lucia Criminal Code.[1]

VIII.—Subordinate Legislation.

There is no special machinery for the preparation of rules, etc.

They are required to be passed, in some cases, by the Executive Council, in some cases by the Legislative Council, and in some cases by the judges with the approval of the Legislative Council.

[1] The St. Lucia Code was founded on the draft code for Jamaica, drawn by Mr. R. S. (now Mr. Justice) Wright.

They are promulgated in the *Gazette.*

The only collection of rules, etc., is contained in Griffith's edition, which only goes as far as 1887. An index to rules, etc., by Mr. Stanley Morgan, is in the press.

GRENADA.[1]

I.—Common Law.

(*a*) The common law of the colony is the English common law. It was introduced by proclamations of the king, dated December 19, 1764, and January 10, 1784 (printed in the 1875 edition of the "Laws of Grenada," pp. 7–11).

(*b*) There is no law applying exclusively to particular races or creeds. There is still on the Statute-book an Immigration Ordinance, intended for the protection of East Indian coolie labourers; but no coolies have been brought to the colony for several years, and the Ordinance is practically obsolete.

II.—Statute Law.

(*a*) The statutory or enacted law of the colony consists of—

(1) Enactments of the Colonial Legislature.

(2) Letters Patent under the Great Seal of the United Kingdom, dated March 17, 1885, constituting the office of Governor and Commander-in-Chief of the Windward Islands; and Instructions under the Royal Sign Manual and Signet to the Governor, dated March 17, 1885, amended by Instructions dated January 20, 1891, and February 15, 1892. These Letters Patent and Instructions create the Executive and Legislative Councils, and specify the powers of the Governor and the Councils.

(3) Some Orders of the Queen in Council of general application, relating to (for example) extradition of criminals, and one in particular relating to the establishment of a Court of Appeal for the Windward Islands; also numerous Orders of the Governor in Council and regulations made by the Governor, or by local authorities under the authority of local enactments, relating to such matters as management of customs and excise, care of streets, roads, and markets, and the like.

(*b*) (i.) By the proclamation of January 10, 1784, before mentioned,

[1] Prepared by the Hon. Sir J. T. Hutchinson, Chief Justice.

GRENADA.

the laws of England were declared to be in force in the colony, so far as the state and circumstances of the colony permitted.

(ii.) There is no Order in Council or charter by which it is expressly provided that any Statutes of the United Kingdom shall operate in the colony.

(iii.) The Legislature of the colony has not enacted the operation of common law.

(*c*) There is no Statute law of any other colony in force in this colony.

(*d*) There is no code or other body of enacted law of non-British origin in this colony.

III.—Methods of Legislation.

(*a*) Drafts of the legislative measures are prepared by the Attorney-General or by some other member of the Government.

(*b*) Measures have to pass through the Legislative Council, whose constitution is prescribed by clause 22 of the Instructions of March 17, 1885.

(*c*) Draft measures are usually published in the *Gazette* after the first reading; but there is no rule requiring them to be published.

(*d*) A measure has to pass through the stages of first and second reading, committee, and third reading, and then requires the Governor's assent.

(*e*) Measures are not referred to any special officer or committee on points of form.

(*f*) The only steps that have been taken to secure uniformity of language, style, or arrangement, are the provisions of Clause 37 of the Instructions of March 17, 1885, and of the Interpretation Act No. 39 of 1854 (similar to the English Act of 1850).

(*g*) There is no annual session of the Legislature. There are no fixed or customary periods of session. Sessions are held at dates fixed by the Governor in his discretion, under Clause 1 of the standing orders.

(*h*) The Ordinances of each year are distinguished by consecutive numbers, commencing in each year with the number one (see paragraph 37 of the Instructions of March 17, 1885). The practice of conferring a short title has been followed since the year 1876.

(*i*) Private Bills are not treated separately or under different conditions from public Bills, except that Clause 39 of the Instructions requires that public notice shall be given before a private Bill is brought before the Council. No line is drawn between private and public Bills; and private Bills are not separately numbered. The only private

Ordinances on the Statute-book are a few passed to confer patent rights for inventions.

(*f*) The practice of accompanying a measure on its introduction by an explanatory memorandum has only been introduced within the last six months.

IV.—Publication of Statutes.

(*a*) Statutes are promulgated by publication in the *Gazette*, accompanied by a notification in the *Gazette* of the Governor's assent. A copy so published is accepted as having been duly passed. A copy authenticated under the hand of Colonial Secretary and the Great Seal of the colony is also deposited with the Registrar of the Supreme Court. There is no statutory or other authority requiring any particular mode of promulgation.

(*b*) Statutes are printed for publication by the Government printer. There is no authority requiring any particular form of publication.

(*c*) and (*d*). The Statutes of each session are not published in a collected form; but those of each year are issued to heads of departments bound in one volume, with a table of contents, but without any index.

(*e*) Only four collective editions of the Statute law of the colony have been published. They were published by the Government, one in 1805 (edited by Chief Justice Smith), a second in 1830 (edited by Alexander McCombie), a third in 1852 (edited by Wm. Snagg, Attorney-General), and the fourth in 1875 (edited by commissioners). They do not comprise any Acts of the United Kingdom.

(*f*) There is no edition of "Selected Statutes."

(*g*) Private Ordinances are published in the same way as public.

V.—Revision of Statutes.

(*a*) Except on the occasions of the four collective editions above mentioned no steps have been taken for the revision or expurgation of the Statute law, beyond the repealing of a few obsolete enactments. and no machinery exists for the purpose.

(*b*) There is no edition of "Revised Statutes."

VI.—Indexing of Statute Law.

There is no general index to the Statute law of the colony.

VII.—Consolidation and Codification.

(*a*) No steps have been taken to consolidate any parts of the law, or to codify any branch of law, except that some of the principal codifying and consolidating English Acts have been adopted.

GRENADA.

(*b*) No machinery for consolidation exists, but the work of consolidating parts of the law, and preparing codes of criminal law and criminal procedure and evidence, is now in progress, with the view of printing a revised edition of the laws.

(*c*) The only code in force in this colony is a Code of Civil Procedure, applying only to causes in the Supreme Court; it was prepared in 1882 by the Attorney-General, and was based on the Civil Procedure Code of the Leeward Islands, which was principally taken from the Rules of Procedure of the Supreme Court in England.

VIII.—Subordinate Legislation.

Rules and regulations and orders made by the Governor, or by the Governor in Council, under the authority of Statutes or Ordinances, are prepared by the Colonial Secretary with the assistance of the Attorney-General, or occasionally by the Attorney-General alone. They are passed by being signed by the Clerk of Councils or the Colonial Secretary. Rules, regulations, or bye-laws made by the head of a department or by a local authority are prepared either by the head of department or by the Attorney-General, or by some officer of the local authority. There is no machinery for the preparation, passing, or promulgation of such rules, regulations, orders, or bye-laws. They are promulgated by publication in the *Gazette*. There is no collection of or index to them.

HONGKONG.[1]

I.—Common Law.

(*a*) The common law of the colony is the common law of England as it existed when the colony obtained a local legislature, that is to say, on April 5, 1843, except so far as it is inapplicable to the local circumstances of the colony or its inhabitants. See s. 7 of Ord. 12 of 1873, set out below (II. (iii.)).

(*b*) There is no law applying exclusively to a particular creed or creeds.

The following Ordinances or parts of Ordinances apply exclusively to Chinese:—

(1) Ord. 3 of 1870 whereby a hospital, called the Tung Wah hospital, was established for the treatment of Chinese patients only.

(2) Ord. 4 of 1856 whereby wills made by Chinese, if proved to have been made or acknowledged and authenticated in accordance with Chinese laws and usages so as to be

[1] Prepared by the Hongkong branch of the Society.

effectual for the transmission of property according to such laws or usages, are rendered valid.

(3) Ord. 26 of 1889 which provides for the extradition of Chinese subjects against whom a *primâ facie* case is made out of having committed one of a certain special class of offences either within the jurisdiction of China or on board of a Chinese ship on the high seas.

(4) S. 48 of Ord. 13 of 1888 which prohibits Chinese from holding or being present at any Chinese public meeting not being a meeting for a religious purpose, without a permit under the hand of the Governor.

(5) Ord. 1 of 1889 and Ord. 25 of 1889, which lay down certain provisions for the protection of Chinese emigrants.

(6) Ord. 5 of 1895, which empowers the Governor in Council to restrict the immigration of Chinese into the colony when an infectious disease is prevalent in another port and there is danger of its introduction into this colony by an influx of Chinese.

II.—Statute Law.

(*a*) The statutory law of the colony consists of Ordinances, which are passed by the Legislative Council of the colony and assented to by the Governor, together with the following classes of Imperial Acts, namely:—

(1) Imperial Acts which, by their own terms apply to and are enforceable in the colony, *e.g.* the Colonial Courts of Admiralty Act, 1890.

(2) Imperial Acts or portions of them which were in force in England on April 5, 1843, except so far as such Acts are inapplicable to the local circumstances of the colony or its inhabitants.

(3) Imperial Acts or portions of them which, having been passed in England since April 5, 1843, have been expressly extended by Ordinance either in whole or in part to this colony.

By Letters Patent passed under the great seal of the United Kingdom and dated January 19, 1888, the former charter of the colony and former Letters Patent were revoked and the present constitution of the colony and the duties and powers of the Governor were defined.

Her Majesty has under certain Imperial Acts power to legislate for the colony by Order in Council.

HONGKONG. There are, for instance, Orders in Council in force regarding currency, viz.—

The Hongkong (Coinage) Order, 1895, and the British Dollar Order, 1895, both dated February 2, 1895.

Under the provisions of various Ordinances the Governor, or the Governor in Council, or the sanitary board with the approval of the Legislative Council, or the captain superintendent of police with the approval of the Governor in Council, has power to make orders, rules, regulations, or bye-laws for the purpose of better carrying out the provisions of such Ordinances.

(*b*) (i.) See (iii.), *infra*.

(ii.) Statutes of the United Kingdom have in a few instances been extended to the colony by Order in Council, *e.g.* the Colonial Probates Act, 1892.

There is no charter now in force extending the Statutes of the United Kingdom to this colony.

(iii.) By s. 7 of Ord. 12 of 1873 it is enacted as follows:—

"Such of the laws of England as existed when the colony obtained a local legislature, that is to say, on April 5, 1843, shall be in force within the colony, subject to the provisions of Ord. No. 11 of 1865 and except so far as the said laws shall be inapplicable to the local circumstances of the colony or its inhabitants."

Ord. No. 11 of 1865 above referred to was repealed by a Statute Law Revision Ordinance (No. 4 of 1887).

In addition to the above Imperial Acts passed prior to April 5, 1843, divers Acts or portions of Acts of the Imperial Parliament passed since the year 1843 have been expressly adopted by Ordinance, whilst various other Imperial Acts or portions of them have been re-enacted in the colony with such slight alterations as to be suited to Hongkong. Moreover, a few Imperial Acts are in force in this colony by their own terms.

(*c*) The Statute law of no other colony is in force in the colony.

(*d*) There is no code or other body of enacted law of non-British origin in force in the colony.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the Attorney-General, who has no official draftsman or staff to assist him.

The duties of the Attorney-General do not extend to measures introduced by private or unofficial members of the Legislative Council, but such measures are in practice always referred to him for his report, and

he suggests such amendments as he considers that the Government ought to require. *HONGKONG*

(*b*) There is only one Legislative Chamber in the colony, which is known as the Legislative Council.

The constitution of the Council is prescribed by Clause 8 of the Letters Patent of January 19, 1888, and Clause 9 of the Royal Instructions of the same date.

(*c*) Occasionally draft measures are published before introduction, but usually they are published in the Government *Gazette* after the first reading in accordance with the standing orders of the Legislative Council (see Standing Rule 39). Members of the Legislative Council are usually furnished with copies of Bills some days before the first reading.

(*d*) Ordinances which are framed in the ordinary way come into force directly they have passed their third reading and received the assent of the Governor. Other Ordinances are so framed as only to come into force on a day to be proclaimed by the Governor.

There are, however, certain classes of Ordinances which are not to be assented to by the Governor, except in cases of urgent necessity until her Majesty's pleasure is signified thereon. Such Ordinances contain a suspending clause. (See, generally, Clause 22 of the Royal Instructions of January 19, 1888.)

(*e*) The discussion of the annual estimates is usually referred to a finance committee, consisting of all the members of the Legislative Council except the Governor. There is a standing committee on law appointed at the commencement of each session, with the Attorney-General as chairman, but, in practice, very few measures are referred to such committee, and the Bills are usually considered in committee of the whole Council. Occasionally special committees are appointed for the purpose of considering special subjects.

(*f*) Ord. 1 of 1867 and Ord. 3 of 1895 have been passed with the object of securing uniformity of language, style, or arrangement. These two Ordinances, when read together, cover the principal general points included in Brougham's Act and the Interpretation Act of 1889. No official or other instructions have been issued on the subject.

(*g*) The annual session lasts, as a rule, from November in one year until June, July, or August in the following year, but there is no fixed period of session.

(*h*) The Ordinances are numbered, by reference to the calendar year, in the order in which they are introduced into the Legislative Council. It is the practice now to confer a short title on each Ordinance, and such has been the general, though not invariable, practice since the year 1873.

HONGKONG.

(*i*) Very few private Bills have been passed in Hongkong, and these principally relate to the incorporation of religious bodies and to naturalization. No particular line has been drawn between private and public Bills, and private Ordinances are not separately numbered. Private Bills are treated under the same conditions as public Bills, except that they are, in accordance with the standing orders of the Council, drawn by the promoters and require to be published in the *Gazette*, and notice of an intention to bring them forward has to be advertised. They are usually referred to the Attorney-General for report, and then, if approved, are brought forward by an unofficial member of the Council. If passed, they are published and numbered with the public Ordinances.

(*j*) A short memorandum explanatory of its general objects usually accompanies the introduction of a measure; such memorandum, which is usually drawn up by the Attorney-General, is printed and circulated with the Bill among the members of the Legislative Council.

IV.—Publication of Statutes.

(*a*) The Ordinances are published in the Government *Gazette* by the Government printers under the hand of the Colonial Secretary and by order of the Governor.

It is enacted by s. 4 of Ord. 31 of 1886 that all Ordinances, upon receiving the assent of the Governor, and all proclamations relating thereto, and all rules, orders, and regulations immediately after they have been made by the Governor shall be transmitted by the clerk of councils, certified under the hand of the Governor and the seal of the colony, to the Registrar of the Supreme Court for record; and that such Ordinances, proclamations, rules, regulations, and orders shall be deemed and considered in the colony to be the originals thereof, and may be proved in any court or judicial proceedings by the production of an examined copy thereof, or of a copy certified under the hand of the said Registrar.

(*b*) The Ordinances are printed by the Government printers both in the Government *Gazette* and in separate sheets under authority of the Colonial Secretary, acting on behalf of the Governor. At the end of each year they are published in one volume, together with the Orders in Council, bye-laws, rules, and regulations made in that year.

(*c*) At the end of each calendar year the Ordinances for that year, together with the Orders in Council, bye-laws, rules and regulations made during that year, are printed by the Government printers under the above authority in one volume.

(*d*) The annual volumes of the Ordinances are accompanied by

an index of titles only of the Ordinances, Orders in Council, rules, regulations, and bye-laws passed and made during the year.

There is no separate table showing the effect on previous legislation, but, as a general rule a consolidating or amending Ordinance contains marginal notes referring the reader to the corresponding repealed sections of the former Ordinances: so, too, in the case of the provisions of an English Statute being re-enacted in this colony, there is usually a marginal reference to each section, indicating the corresponding section of the English Act from which it is borrowed.

(*e*) An edition of the Ordinances at large from the year 1844 (when Ordinances were first passed) down to the year 1887, both years inclusive, together with the proclamations, rules, regulations, bye-laws, and Orders in Council in force on October 31, 1890, was published in four volumes in the year 1890 by the Government.

The above edition contains an index which shows how the various Ordinances have, from time to time, down to and including the year 1890, been dealt with.

Since the year 1890 annual editions of the Ordinances and of the Orders in Councils, rules, regulations, and bye-laws passed and made during the year have been published in separate volumes by the Government.

The above editions do not comprise those Acts of the United Kingdom which are in force in this colony.

(*f*) There is no edition of "Selected Statutes" corresponding to Chitty's "Statutes of Public Utility."

(*g*) By Standing Order No. 54 a private Bill must be published once at least in the Government *Gazette* before it can be introduced. Private Ordinances are at the end of each year bound up and published in one volume with the public Ordinances indiscriminately.

V.—Revision of Statutes.

(*a*) One Statute Law Revision Ordinance has been passed, namely, Ord. 4 of 1887, which repealed divers Ordinances or parts of Ordinances which had become unnecessary.

There is no periodical revision of the law.

Formerly there used to be a Statute Law Revision Committee, with a paid secretary, but that committee has now fallen into abeyance and is never convened, and there is now no secretary.

(*b*) There is an edition of the revised Ordinances, in two volumes, from the year 1844 (when Ordinances were first passed) down to the year 1890, both years inclusive. Such edition was prepared by Mr. A. J. Leach as paid secretary of the Law Revision Committee, and was

HONGKONG. published under the authority of the Government. No later edition has been published, and it is not published at periodical intervals. The contents are arranged chronologically.

VI.—Indexing of Statuté Law.

There are two indexes to the Statute law of the colony. One of them was prepared by Mr. A. J. Leach, now Puisne Judge in the Straits Settlements, and only extends down to the year 1885 ; the other was published in the month of September, 1895, by Mr. E. C. Ellis, recently a solicitor in this colony, and includes the Ordinances then in force from and including the year 1844 down to and including Ord. 13 of 1895, which was passed on May 30, 1895. The above indexes are arranged on the alphabetical principle with numerous cross-references. They are not revised periodically. They include both public and private Ordinances passed in the colony, and at the commencement contain a small table showing the Imperial Acts or parts of Acts which have been expressly extended to the colony by Ordinance since the year 1843. Such table does not include re-enactments of Imperial Acts, nor does it show how each Statute has been dealt with. (See, however, IV. (*e*) above, from which it will be seen that a table has been published showing how the different Ordinances of this colony down to and including the year 1890 have been dealt with.)

VII.—Consolidation and Codification.

(*a*) The following are measures of consolidation and codification :—

Ord. 13 of 1873 (commonly called the Code of Civil Procedure) amended by Ord. 5 of 1893.

Ord. 2 of 1889 (law of evidence).

Ord. 1 of 1889 (Chinese emigration), amended by Ord. 25 of 1889.

Ord. 10 of 1890 (jurisdiction of and procedure before magistrates), amended by Ord. 12 of 1895.

Ord. 11 of 1890 (prevention of traffic in women and girls for the purposes of prostitution), amended by Ord. 14 of 1891 and Ord. 6 of 1894.

Ord. 1 of 1883 (distress for rent), amended by Ord. 15 of 1892. (See, too, s. 35 of the Bankruptcy Ordinance, 20 of 1891.)

Ord. 14 of 1887 (police force), amended by Ord. 20 of 1890.

The English Criminal Law Consolidation Acts of 1881 have been introduced with slight amendments by Ords. 4–10 of 1865 ; the Companies Acts by Ord. 1 of 1865, Ord. 3 of 1866, etc.

Ord. 18 of 1887 (jurors), amended by Ord. 3 of 1894. (See, too,

Ord. 2 of 1860 and ss. 28 and 29 of Ord. 14 of 1873, as amended by Ord. 2 of 1894). *HONGKONG.*

(*b*) The Attorney-General carries out such consolidation and codification of the law as is from time to time deemed advisable.

(*c*) The only measures of codification proper are those adapted from the English Acts—those as to Bills of exchange and sale of goods.

VIII.—Subordinate Legislation.

Measures of subordinate legislation are usually roughly framed by the department concerned, and are then submitted to the Attorney-General. When put into shape they are considered and passed by the Executive or Legislative Council, as the case may be.

There is an alphabetical table of proclamations, rules, regulations, bye-laws, and Orders in Council in force in this colony on March 31, 1891, which is contained in an edition of the Ordinances at large from the year 1844 to the year 1887, which was published in the year 1891. In the year 1891, and in every year since, proclamations, rules, regulations, bye-laws and Orders in Council which have been passed during the year are published annually in one volume together with the Ordinances passed during the year.

JAMAICA.[1]

I.—Common Law.

(*a*) The common law of England was introduced in 1655. It has been held that Jamaica is a settled and not a conquered country. See evidence of Scarlett, C.J., given before the Commission in 1827.

(*b*) There are a few special laws relating to East Indian immigrants.

II.—Statute Law.

(*a*) Formerly the laws were enacted by the Houses of Assembly. They are now enacted by the Legislative Council, with the assent of the Queen, or by the Governor or Secretary of State for the Colonies on her behalf. (See Order in Council May 19, 1884, c. 37–39).

No charters appear to be in force. Regulations are made by the Governor in Privy Council, and by the parochial boards of the several parishes under various laws. Most regulations are made by or with the consent of the Privy Council.

Orders in Council regulate the constitution of the colony—*e.g.* Orders in Council, June 11, 1866; May 19, 1884; and October 3, 1895.

[1] Prepared by Mr. C. F. Lamb, Acting Chief Justice.

JAMAICA.

Orders in Council also regulate appeals to the English Privy Council.

(*b*) (i.) In 1655 the original colonists brought with them the English Statute law in so far that it was applicable to the circumstances.

(ii.) There is no provision in any Order in Council or charter for the application of English law.

(iii.) The island Statute 1 Geo. II. c. 1, s. 22, enacts that "all such laws and Statutes of England as have been at any time esteemed, introduced, accepted, or received as laws in this island, shall and are hereby declared to be" laws of this island for ever. This was construed by the Supreme Court in Jaquet *v.* Edwards in 1866.

In several cases recent British Statutes have been copied substantially by the local legislature.

(*c*) No Statute law of any other colony is in force.

(*d*) No code or enacted law of non-British origin is in force.

III.—Methods of Legislation.

(*a*) Government measures are drafted by the Attorney-General, but in the event of his being unable for any reason to do so the clerk of the Legislative Council drafts them. Each has a clerk, whose duties are entirely clerical. Their duties do not extend to measures introduced by private or non-official members of the Legislative Council.

(*b*) The Legislative Council is constituted under the Orders in Council of May 19, 1884, and October 3, 1895, made in pursuance of the local laws 29 Vict. c. 11, s. 1, and 29 Vict. c. 24, and the English Statute 29 & 30 Vict. c. 12.

(*c*) Draft measures are not published before introduction, or before any other stage.

(*d*) All measures, after being read twice, are considered in committee of the whole council, and then read a third time. Some measures are referred to a select committee after second reading.

(*e*) Measures are not referred to any particular officer during the course of their passing, and only in some cases to a select committee.

(*f*) Uniformity of language is provided for by the island Statute, 18 Vict. c. 31, which corresponds to Brougham's Act.

(*g*) The Legislative Council usually meets in February, and sits continuously for about two months.

(*h*) The "laws" (as the Statutes are termed) are now distinguished by numbers with reference to the calendar year. Up to 1866 they were distinguished with reference to the regnal year.

Most laws have a short title, and this practice has been observed for several years.

(*i*) Private Bills have to be notified by advertisement to the satisfaction

of the Governor in Privy Council prior to introduction. They are passed in the same way as public Bills, but are always referred to a select committee. When passed they are in all respects the same as public laws, and are numbered among and with them and not separately. There is no standing order defining what are to be considered as private Bills. Speaking generally all Bills conferring specific rights on individuals or corporations, and not introduced by the Government, are private Bills. They are very seldom introduced, and do not average more than one in every four or five years.

(*j*) No explanatory memoranda are used.

IV.—Publication of Statutes.

(*a*) The laws are published by the authority of the Governor in the Jamaica *Gazette*, under Laws 24 of 1869 and 3 of 1873, and the *Gazette* is accepted as evidence of a Statute having been duly passed.

(*b*) The laws are printed for publication by the Government printing-office under order of the Governor.

(*c*) The laws of each session are published in a collective form at the end of each session.

(*d*) A table of the annual laws is prefixed, but not an index. There is also a table showing the effect on previous legislation.

(*e*) A collective edition of the Statute law was published in 1867 by Mr. Minot, (it is believed) by private enterprise. Another was brought out in 1873 by Mr. Justice Kerr and Mr. Schlach, Attorney-General. This was a chronological list of Statutes up to 1866, and was a Government production.

In 1887 Mr. Justice Curran edited an edition chronologically arranged (now in use), and this was a Government production.

None of these were periodical.

None of them comprise those Acts of the United Kingdom in force in the colony, and no collection exists.

Such a collection is extremely desirable, and would be of great use.

(*f*) There is no edition of "Selected Statutes" corresponding to Chitty's "Statutes of Practical Utility."

(*g*) Private Acts are published in the same manner as public laws.

V.—Revision of Statutes.

(*a*) Mr. Justice Kerr drafted Law 19 of 1873 for the purpose of the revision of the island laws; but nothing has been done under it. The law is not now in force, and no machinery or law has been provided or passed by any of the recent Attorneys-General.

JAMAICA.

(*b*) There is no edition of "Revised Statutes" showing those actually in force. The laws are in a very confused and unsatisfactory state, as recent legislation has taken the form of amendments in so many cases.

VI.—Indexing of Statute Law.

There is no official index to the Statute law of the colony.

The last Attorney-General published an index in 1882; a second and third were published in 1891 by Mr. B. Griffith and by Mr. Feurtado. They are all arranged alphabetically, but on what other principle I cannot make out. Except Mr. Griffith's, none of them are of much practical use.

They are intended to include the public and private laws, but not the Statutes of the United Kingdom which are in force in the colony. Nor do they include any tables showing how each Statute has been dealt with.

VII.—Consolidation and Codification.

(*a*) No steps have been taken to consolidate or codify the law, and no machinery exists for the purpose, as pointed out in V.

(*b*) The laws of this island are in a very unsatisfactory state, as the legislation of recent years has been so "piece-meal."

(*c*) There is in force in the colony a civil procedure code based on the English Judicature Rules, 1883.

VIII.—Subordinate Legislation.

In the case of rules made by the Governor in Privy Council the Attorney-General prepares them (except rules of court, which are made by the judges). Rules made by local authorities or other bodies, with the sanction of the Governor in Privy Council, are generally prepared by themselves or by their legal advisers.

There is no collection or index to such subordinate measures.

NEW SOUTH WALES.[1]

I.—Common Law.

(*a*) The common law of New South Wales is the common law of England. The common law of England was introduced into New South Wales on its being "discovered and planted by English subjects."

[1] Prepared by J. L. Watkins, Esq., Parliamentary draftsman to the Government of New South Wales.

(See quotation from Blackstone in the judgment of the Privy Council in Cooper *v.* Stuart (L. R. 14 App. Cas. 286).

(*b*) There is no common law in force in the colony applicable exclusively to particular races and creeds.

II.—Statute Law.

(*a*) The statutory or enacted law of the colony consists of—

(1) English Statutes existing at the time of the occupation of the colony so far as they are applicable to the then existing circumstances of the colony.

(2) Laws and Statutes in force within the realm of England at the time of passing of 9 Geo. IV. c. 93, so far as the same can be applied. (See s. 24.)

(3) Enactments of the Imperial Parliament extending to the colony or any orders or regulations made thereunder, or having in the colony the force of an Act. (See 28 & 29 Vict. c. 63.)

(4) Statutes passed by the legislature of the colony and regulations and bye-laws made thereunder.

(5) The Charter of Justice made under the authority of 4 Geo. IV. c. 96, and charters granted to certain private corporations.

(6) Orders of her Majesty in Council.

1. Of an enabling or regulating character, *e.g.* the Order in Council of November 13, 1850, regulating appeals to the Privy Council.
2. Applying Imperial enactments to the colony, *e.g.* under 20 & 21 Vict. c. 39; and under the Extradition Act 33 & 34 Vict. c. 52.

(*b*) The Statutes of the United Kingdom operate—

(1) On the occupation of the colony to the extent that the law is reasonable and applicable to the then existing circumstances of the colony. (See Cooper *v.* Stuart, *supra.*)
On the passing of 9 Geo. IV. c. 83, so far as they can be applied.

(2) They operate by virtue of Orders in Council or charters to the extent authorized by the particular Imperial Statutes under which the orders are made or charters granted.

(3) There are now very few Imperial Acts in force adopted by the Legislature of the colony. An example of Imperial Acts adopted by the local Legislature is the Justices Acts,

NEW SOUTH WALES.

11 & 12 Vict. c. 42, c. 43, and c. 44, which were adopted by 14 Vict. No. 43, and are still in force.

(*c*) No Statute law of any other colony is in force in New South Wales.

(*d*) No code or other body of enacted law of non-British origin is in force in New South Wales.

III.—Methods of Legislation.

(*a*) (1) Drafts of legislative measures are prepared by the members of Parliament introducing them, or by some person acting under their authority or by their direction.

(2) There are two official draftsmen named "Parliamentary draftsmen."

(3) They are appointed by the Governor with the advice of the Executive Council.

(4) They are in the department of the Attorney-General, and are responsible to him.

(5) The staff are the two draftsmen and an assistant.

(6) The duties of the draftsmen are—

1. The preparation of Bills for the ministers of the Crown.
2. The preparation of Bills for private members on the request of the Attorney-General.
3. Reporting to ministers on the introduction of any Bill by a private member and on its passage from the Legislative Assembly to the Legislative Council.
4. Reporting to the Attorney-General at his request on all bye-laws and regulations of public bodies submitted to him for his opinion or approval.
5. Reporting on any special matter submitted by any minister to the parliamentary draftsmen.

(7) The duties of the parliamentary draftsmen extend, as above-mentioned, to measures introduced by non-official members of Parliament.

(*b*) There are two Legislative Chambers—

(1) The Legislative Council, constituted by the schedule to the Constitution Act 18 & 19 Vict. c. 54, as amended by 20 Vict. No. 10, and the Constitution Act Amendment Act of 1890 (54 Vict. No. 1), and the Imperial Colonial Laws Validity Act (28 & 29 Vict. c. 63).

(2) The Legislative Assembly constituted by the schedule to the Constitution Act, the Act 20 Vict. No. 10 (Amending Act), the Act 37 Vict. No. 7 (Triennial Parliaments), the

Constitution Act Amendment Act of 1884 (47 Vict. No. 5), the Parliamentary Electorates and Elections Act of 1893 (56 Vict. No. 38), and 57 Vict. No. 3, 57 Vict. No. 24, and 58 Vict. No. 1 amending the same, and the Imperial Colonial Laws Validity Act (28 & 29 Vict. c. 63). Members of the Legislative Assembly are allowed £300 a year by way of reimbursement of expenses (53 Vict. No. 12).

Measures may be introduced in either Chamber, except that all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax, or impost, must originate in the Legislative Assembly (s. 1 of schedule to Constitution Act).

(*c*) Public Bills are not published before introduction. After the first reading motion may be made that the Bill be printed. (See standing order of Legislative Council approved by Governor, August 8, 1895, No. 166; and see also standing order of Legislative Assembly, approved by Governor, June 11, 1894, No. 251.)

Private Bills are printed on leave being given to bring them in and before being read a first time. (See standing order of Legislative Council No. 270, and standing order of Legislative Assembly No. 400.)

(*d*) A measure must be read three times in each Chamber and assented to by or on behalf of her Majesty before it becomes law.

(*e*) There is no power to refer measures during their passage through the legislature to any special officer or committee on points of form, except—

(1) The usual proceedings in committee of the whole House in the case both of public and private Bills.

(2) The reference of private Bills to a select committee.

(3) The power of the chairman of committees to correct clerical, typographical, and other obvious errors. (See standing order of Legislative Council, No. 192, and standing order of Legislative Assembly No. 284).

(*f*) The Acts Shortening Acts (16 Vict. No. 1 and 22 Vict. No. 12) provide to a certain extent for uniformity of language, style, and arrangement of Statutes.

(*g*) There must be a session of Parliament once at least in every year (s. 31 of schedule to Constitution Act, 18 & 19 Vict. c. 54).

(*h*) (1) Acts are distinguished by the regnal year and are numbered.

(2) A "short title" is usually conferred on each Act. The practice began to obtain about 20 Vict.

(*i*) (1) Private Bills are treated separately and under different conditions from public Bills. (See standing orders of Legislative Council,

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Nos. 266 to 280; and standing orders of Legislative Assembly, Nos. 396 to 411.)

(2) No principle is laid down in the standing orders drawing the line between public and private Bills, except Order No. 245 of the Legislative Assembly.

(3) Private Acts are marked by the regnal year, but are not numbered.

(*f*) The practice of accompanying a measure on its introduction by an explanatory memorandum is not general, but has sometimes been followed in the case of important measures introduced by ministers.

IV.—Publication of Statutes.

(*a*) (1) Statutes are promulgated by printing them in the Government *Gazette.*

(2) In the colony,

Judicial cognizance is taken of the public Statutes of New South Wales. Copies of private Acts purporting to be printed by the Government printer, or by the authority of the Government are *primâ facie* evidence thereof (13 Vict. No. 16, s. 4).

Generally,

A colonial law assented to by the Governor or reserved may be proved by certified copy.

The disallowance or assent by her Majesty to a reserved Bill may be proved by a proclamation purporting to be published by the Governor in any newspaper in the colony. (See 28 & 29 Vict. c. 63, s. 6.)

(*b*) Statutes, besides being published in the Government *Gazette*, are printed in folio form by the Government printer, under the authority of the Government; some are also printed in the form of pamphlets.

(*c*) Statutes of each session are published in a collected form at the end of each session.

(*d*) The sessional parts are accompanied by an index only of the Statutes.

(*e*) (1) *Public Statutes.*—The latest collection of public Statutes was compiled in 1879 by Mr. Alexander Oliver, then parliamentary draftsman, three volumes of which were published, the first two containing the Statutes in force up to the year 1879, arranged alphabetically with notes, and the third consisting of a chronological table and index of those Statutes.

Since 1879 the Government printer has from time to time bound

together the public Statutes at large, arranged chronologically with an alphabetical index.

Mr. Oliver's Statutes were printed by the Government printer and published by authority.

Private Statutes.—The latest collection of private Statutes is one compiled in 1886 by the late Mr. W. W. Tarleton, containing private Statutes of practical utility passed between 1832 and 1885, arranged alphabetically with chronological table.

(2) No periodical continuations of Oliver's "Statutes" have been published.

(3) No edition exists of all the Acts of the United Kingdom in force in the colony. An edition of those Acts was begun by Mr. Oliver, but not completed.

(*f*) Oliver's "Statutes" correspond to Chitty's "Statutes," in so far as they are arranged alphabetically; but none but repealed, spent, or expired enactments and private Acts have been excluded.

(*g*) Private Acts are published by the Government printer.

V.—Revision of Statutes.

(*a*) No steps have been taken for the revision or expurgation of the Statute law.

(*b*) No edition of "Revised Statutes" subsequent to the publication of Oliver's "Statutes" mentioned above has appeared since 1879. The contents of Oliver's "Statutes" are arranged alphabetically.

VI.—Indexing of Statute Law.

(1) With Oliver's "Statutes" there was published a general index comprising the Statute law as it stood in 1879. Since then Mr. T. B. Clegg has published his index of the public general Acts of New South Wales in force on January 1, 1892. No publication has appeared since the last-mentioned date.

(2) Clegg's "Index" contains—

1. A chronological table of Statutes (1) in force at the date of the publication of Oliver's "Statutes;" (2) passed since 1879.
2. A subject index of Statutes arranged alphabetically.

(3) Neither index includes private Acts or anything like a comprehensive list of the Statutes of the United Kingdom in force in the colony.

(4) Each index shows what Statutes have been repealed or amended.

(5) No second edition has been published of either index.

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VII.—Consolidation and Codification.

(*a*), (*b*) A commission has been appointed which is now engaged in consolidating the Statute law of the colony.

(*c*) No codes exist, except certain copies of English codes which have been enacted by local legislature, *e.g.* the Bills of Exchange Act, the Partnership Act, 1892.

VIII.—Subordinate Legislation.

(1) Subordinate legislation in this colony consists of—

1. Rules and regulations made by the Governor.
2. Rules and regulations made by ministers of the Crown.
3. Regulations and bye-laws made by bodies administering public property or charged with public duties, such as municipal councils, trustees of public lands, courts of petty sessions, etc. These regulations and bye-laws, as a rule, only have effect when approved or confirmed by the Governor, with the advice of the Executive Council.

(2) Regulations are published by the Government printer in pamphlet form, together with the Acts under which they are made; but the practice is not general. An index of the Act and Regulations is published in the case of some Statutes of general interest, *e.g.* the Mining on Private Lands Act of 1894.

There is no general collection of or index to subordinate measures.

QUEENSLAND.[1]

I.—Common Law.

(*a*) The common law of Queensland is that of England. It has been in force from the establishment of the colony in 1859, when Queensland was separated from New South Wales and erected into a separate colony. The common law of England had been introduced into New South Wales on the original settlement of that colony.

(*b*) There is no law in Queensland applying exclusively to particular races or creeds. There are, however, Acts restricting the introduction of Chinese, and regulating the employment of Polynesians.

II.—Statute Law.

(*a*) The Statute law of Queensland comprises—

(1) The Statute law of England which was in force in the year

[1] Prepared by the Hon. Sir Samuel W. Griffith, G.C.M.G., Chief Justice.

1828, so far as it was applicable to Australia (9 Geo. IV. c. 83, s. 24), and so far as it has not since been repealed or altered by local Statutes.

(2) The Ordinances and Statutes of New South Wales up to 1859, so far as they have not since been altered or repealed by the Parliament of Queensland.

(3) The Statutes passed by the colony of Queensland since the establishment of the colony.

(*b*) (i.) The Statutes of the United Kingdom which were in force in 1828, and which have not been repealed by local legislation, operate in Queensland under the Statute of 9 Geo. IV. c. 83, s. 24, as already stated.

(iii.) Several Statutes were expressly adopted by the legislature of New South Wales, and remained in force in Queensland after separation, but all have since been repealed with the exception of 7 Will. IV. and 1 Vict. c. 88 (Piracy), which was formally adopted in New South Wales by the Act 2 Vict. No. 10.

(*c*) The Statute law of New South Wales is in force in Queensland to the extent already stated.

(*d*) No enacted law of non-British origin is in force in Queensland.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared, in the case of Government measures, under the direction of the department concerned, and usually by a member of the bar, under the supervision, if desired, of the Crown Law Office. Measures introduced by private members are usually prepared under their own direction, aid being given occasionally from the Crown Law Office. There is no permanent parliamentary draftsman.

(*b*) There are in Queensland two Legislative Chambers, one nominated for life, the other elected (see the Constitution Act, 31 Vict. No. 38).

Bills authorizing appropriation must be introduced into the elected house, and on the recommendation of the Governor.

(*c*) Draft Bills are not published before introduction. After the first reading they are ordered to be printed. They are invariably in the hands of members at the time of the second reading.

(*d*) The procedure in passing Bills is substantially identical with that followed in the Parliament of the United Kingdom.

(*e*) No arrangement is in force for referring Bills to the draftsmen or other persons for the purpose of reconstruction.

(*f*) The Acts Shortening Act (31 Vict. No. 6) covers a range

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wider than that of 13 & 14 Vict. c. 21, but not so wide as that of 52 & 53 Vict. c. 63.

(*g*) The Constitution Act requires Parliament to be summoned once in each year. In practice it meets in May or June, and the session lasts till November or December.

(*h*) Public Acts are numbered by reference to the year of her Majesty's reign.

In practice a short title is given to every Act which is likely to be cited. This practice has been followed, with few exceptions, since the establishment of the colony.

(*i*) Public notice by advertisement must be given of the intention to introduce a private Bill. Such Bills are referred to a select committee, and the preamble of the Bill must be proved to their satisfaction.

The distinction between public and private Bills is drawn on the principles adopted by the United Kingdom.

Private Acts are not numbered.

(*j*) It is not the practice to accompany a Bill on its introduction by an explanatory memorandum.

IV.—Publication of Statutes.

(*a*) Statutes are published in the Government *Gazette* immediately after receiving the Royal Assent. One original of every Act, bearing the Governor's assent, is deposited in the Registry of the Supreme Court.

In the case of private and local and personal Acts it is provided by Statute (31 Vict. No. 13, s. 2) that a copy purporting to be printed by the Government printer, or by authority of the Government, is *primâ facie* evidence of the passing of the Act.

(*b*) Statutes are published as above stated in the Government *Gazette* by authority of the Government.

(*c*) The Statutes of each session are also published in a collected form at the end of the session. The volume also includes such new Acts of the United Kingdom as extend to Queensland.

(*d*) The sessional volumes have of late years been accompanied by an index and table of contents, and a table showing the effect on previous legislation.

(*e*) Four collective editions of the Statute law of Queensland have been published in 1862–3, 1874, 1881, and 1889, all at the expense and by authority of the Government. The first was edited by Mr. R. Pring (then Attorney-General), the second by Mr. J. K. Handy, the third by Mr. F. A. Cooper, and the fourth by Messrs. Pain and Woolcock. The three first editions included a few of the Acts of the

United Kingdom in force in Queensland. The last contains, in a separate volume, a collection of some of the more important of those Statutes.

(*f*) There is no edition of any "Selected Statutes" except as lastly stated.

(*g*) Private Acts are published in the same manner as public Acts. They are all included in the collections mentioned, the latest containing them in a separate volume.

V.—Revision of Statutes.

(*a*) No formal machinery is in existence for the periodical revision or expurgation of the Statute law. No steps have been taken for that purpose except so far as stated under heading No. VII.

(*b*) The collection of Statutes edited by Messrs. Pain and Woolcock (1889) is the latest edition of "Revised Statutes." The contents are arranged alphabetically as to subjects, and chronologically as to Statutes dealing with the same subject.

VI.—Indexing of Statute Law.

The index to the edition just mentioned, with the annual indexes to the Statutes since passed, constitute the only general index. They include all the Statutes included in the collection, but no others.

The table accompanying the collected edition of 1889 shows how every Statute of New South Wales up to 1859, and every Statute of Queensland up to the date of the edition, had been dealt with. The annual tables give similar information as to all colonial Statutes, and as to the Imperial Statutes included in the edition of 1889, or since included in the annual volumes of Statutes.

VII.—Consolidation and Codification.

(*a*) In 1865 the seven Criminal Law Consolidating Acts of 1861 were adapted to Queensland under the supervision of Sir James Cockle, then Chief Justice, and were passed by the legislature, superseding the earlier consolidations of 1826 to 1832, which had been adopted in New South Wales before separation, and had become the law of Queensland.

In 1867 twenty-nine several Acts were prepared under the supervision of the same learned judge, consolidating the law relating to the following subjects:—The form of Statutes; the constitution of the colony; the Legislative Assembly; electoral districts; parliamentary elections; the constitution, etc., of the Supreme Court; common law process; common law practice; joinder and revivor of actions;

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common law pleading; Statutes of frauds and limitations; evidence and discovery; juries; oaths; mercantile interests; bills of exchange, promissory notes, and cheques; distress, replevin, and ejectment; wills, succession, etc.; probate; the curator of intestate estates; arbitration, interpleader, and prerogative writs; equity procedure; trustees and incapacitated persons; costs; district courts; small debts courts; recovery of small tenements; aliens; medical practitioners and chemists.

These consolidations embodied the provisions of over 120 earlier Statutes.

In 1885 a Bill consolidating and amending the laws relating to justices of the peace and their powers and authorities, which was founded to a large extent on a draft prepared by Sir James Cockle, who had then ceased to be Chief Justice, was drawn and introduced by the writer (who then held the office of Chief Secretary), and became law.

The Bills of Exchange Act (45 & 46 Vict. c. 61), the Settled Land Act (45 & 46 Vict. c. 38), and the Partnership Act (53 & 54 Vict. c. 39), were adopted, with slight alterations, in 1884 (48 Vict. No. 10), 1886 (50 Vict. No. 13), and 1891 (55V ict. No. 7).

In 1889 a Bill codifying the law of defamation was prepared and introduced by the writer (then an unofficial member of the Legislative Assembly), and became law (53 Vict. No. 12). A Bill codifying the law relating to natural waters was prepared and introduced by the same member in 1887, and again in 1888, but did not become law.

A Bill codifying the law relating to contempt of Court was also prepared by the writer in 1890.

(*b*) There is no existing machinery for the consolidation and codification of any branch of the law.

The present writer undertook some time ago, at the request of the Government, to prepare a draft code of criminal law. It appeared, however, desirable (if only for the information of the legislature), to prepare in the first instance a digest embodying all the existing local criminal Statute law. That law consists, in part, of the English Statute criminal law in force in 1828 which has not since been repealed by local legislation, in part of provisions contained in Statutes of New South Wales not since repealed in Queensland, and in part of the Criminal Law Consolidating Acts of 1861 already mentioned, while numerous other provisions are scattered over the whole Statute book.

This digest is now in the press, and will be soon ready for publication. The work of preparing a code will then be proceeded with.

(*c*) There are no codes in force in the colony except those already mentioned relating to bills of exchange, partnership, and defamation. Their history and authorship have been already stated.

VIII.—Subordinate Legislation.

There is no special machinery in Queensland for preparing or passing measures of subordinate legislation.

All such measures must be promulgated in the Government *Gazette*.

There is no collection or index of them.

SAINT LUCIA.[1]

I.—Common Law.

In this colony the common law of England prevails where the codes are silent. It was introduced by the English judges twenty-five years ago. Before that time the French judges applied the Coutume de Paris.

There is no common law applying exclusively to particular races.

II.—Statute Law.

The statutory law of the colony consists of Ordinances, a Civil Code, a Code of Civil Procedure, a Criminal Code, and a Code of Criminal Procedure; all these codes have been made law by Ordinances. The Statutes of the United Kingdom do not operate in the colony. Some Orders in Council have been adopted by the legislature, and some Statutes, either wholly or in part, such as Merchant Shipping Ordinance, Bills of Exchange Ordinance, Police, Customs, and Joint Stock Companies Ordinance.

The Statute Law of no other colony is in force here, but the criminal codes are the same as those of Upper Canada.

An enactment of the year 1681 by the French King entitled "*Arrêt en Réglement du Conseil Superieur portant que la Coutume de Paris et les ordonnances du Roi seront suivies en cette Ile*," subject to the provisions of the Civil Code, Article 2485, is still in force, as also are the following: "*Ordre du Roi au sujet des Cinquante Pas du Bord de Mer*," dated 1704; and "*Arrêt du Conseil Souverain concernant les cinquante Pas du Roi*," dated 1781.

III.—Methods of Legislation.

The Attorney-General prepares drafts of legislative measures and is the only draftsman. Measures introduced by private or unofficial

[1] Prepared by the Hon. Sir A. Child, Chief Justice.

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members of the legislature are prepared by themselves or by counsel on their behalf. There are two chambers through which measures have to pass, viz. the Executive Council and the Legislative Council. The executive consists of the Administrator of St. Lucia, or of the Governor of the Windward Islands, and the Administrator sitting as Colonial Secretary, the Attorney-General, the officer in command of the troops, and the Treasurer. All measures are discussed in draft by these in private.

The Legislative Council consists of six official and six unofficial members, with the Administrator as chairman.[1] Draft measures are sent round to members of council before introduction, but are not published. A measure passes through the same stages as an English Bill. Measures are sometimes sent back to the Attorney-General to redraft.

There are no fixed sessions of the council; it is called together whenever the Governor or Administrator thinks necessary.

The Ordinances up to 1889, when the revised law was published, are numbered from the formulation of the codes and dated. Since then they are numbered by reference to the calendar year. All the revised Ordinances have short titles.

Private Bills are treated exactly as public Bills, and are not separately numbered.

No measure, on its introduction, is accompanied by an explanatory memorandum.

IV.—Publication of Statutes.

Ordinances are promulgated by a notification in the *Royal Gazette* that the Queen has been pleased not to exercise her authority to disallow the Ordinance. This is the evidence of the passing of an Ordinance. The Ordinances are also printed and attached to the *Royal Gazette*, and at the beginning of every year a paper-bound book of Ordinances is published containing the enactments of the past year. These volumes have an index, and table of contents, but no table showing the effect on previous legislation.

The laws of St. Lucia, containing, amongst other Ordinances, the Criminal Code, were published by the Government in 1889, and in 1880 the Civil Codes were also published. The publication of 1889 comprises those Acts of the United Kingdom which have been copied wholly or in part for the requirements of the colony. There is an edition of "Selected Ordinances." Private Acts are published in the same way as Public Acts.

[1] Further information on this subject can be obtained from the Colonial Office List.

V.—Revision of Statutes.

The laws of St. Lucia were revised and re-arranged in 1889 by Dr. Carrington, the late Chief Justice. No machinery exists for the purpose of such revisions. Hitherto they have been carried out by the Chief Justice.

The edition of 1889 shows those laws actually in force. The contents are arranged chronologically and there is an index.

VI.—Indexing of Statute Laws.

There is no general index to the Statutes of the colony.

VII.—Consolidation and Codification.

A civil code and a criminal code are in force. The civil code, introduced in 1880, was prepared by Mr. Administrator Des Vœux and Chief Justice Armstrong. It is practically the law of Upper Canada, of which colony Mr. Armstrong was a native. The criminal code introduced in 1889 was prepared by Chief Justice Carrington on the model of the Jamaica code.[1]

VIII.—Subordinate Legislation.

The Governor in Executive Council prepares, passes, and promulgates measures of subordinate legislation. These are first drafted by the Attorney-General. There is no index to the collection of these subordinate measures.

ST. VINCENT.[2]

I.—Common Law.

(*a*) The common law of England. By the Treaty of Paris St. Vincent was ceded to the British Government in 1763, and by his Majesty's proclamation, dated October 7, 1763, St. Vincent, Grenada, Dominica, Tobago, and the Grenadines were formed into one Government. The common law of England, and the Statute law, so far as it was applicable, have been generally considered to have been introduced into this colony by that proclamation and the letters patent therein to.

(*b*) There is no law applying exclusively to particular races or creeds.

[1] Drafted by Mr. R. S. (now Mr. Justice) Wright for Jamaica, but never brought into force there. It has been adopted in British Honduras, Gold Coast, St. Vincent, and St. Lucia.

[2] Prepared by S. Leslie Thornton, Esq., Attorney-General.

ST. VINCENT.

II.—Statute Law.

(*a*) The statutory law of the colony consists of Acts and Ordinances and partly of Regulations or Orders in Council made thereunder.

(*b*) Whether any particular Statute of the United Kingdom passed prior to 1763, the date of cession, is in force in the colony or not has to be decided in each case by judicial decision.

(*c*) No Statute law of any other colony is in force in this colony.

(*d*) There is no code or other body of enacted law of non-British origin.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the Attorney-General, who is appointed by the Crown. The Attorney-General is not provided by the Government with any staff, has the right of private practice, and has his official duties prescribed for him by Act No. 56 of 1844.

The duties so prescribed are—

(1) To conduct the business at the criminal sessions;

(2) To draft Bills for introduction into the legislature, whether for the Government or private members of the legislative body;

(3) To draw recognizances for the due performance of the duties of public officers.

(*b*) The earlier constitution of the colony was abrogated by an Act of the Local Legislature, Act No. 398 of 1875 (confirmed by an Imperial Act 39 & 40 Vict. c. 47); and a Queen's Order in Council dated March 5, 1885 as added to by a subsequent Order in Council dated August 26, 1886, created a new legislative body under the name of the Legislative Council as therein mentioned.

(*c*) It is now the practice to publish the draft measure before introduction, and the Ordinance, after being assented to, in the official *Gazette*.

(*d*) Leave for its introduction is first asked for; upon leave being granted, it is read a first time; at a subsequent meeting of the Legislative Council the consideration of the Bill in committee is moved for, such reading and consideration in committee being deemed the second reading. On the conclusion of the committee stage, the council resume, and a motion is then made that the Bill be read a third time and passed. In cases of urgency the standing orders may be suspended, and the bill passed through the three readings at one sitting.

(*e*) I know of none, though in a recent instance after the first reading upon motion, several Bills, including a criminal code, criminal procedure code, evidence code, and others, have been referred to a

nominated committee of the council for report to the council prior to the second reading.

(*f*) An "Interpretation Ordinance" of a wide nature has recently passed the council, and has now obtained the approval of the Secretary of State.

(*g*) There is no annual session of the legislature. The council must be convened once at least in every three months.

(*h*) Up to the end of 1877 the enactments were described as Acts, and numbered consecutively; since that date they have been described as Ordinances, and numbered by reference to the calendar year.

Every Ordinance now bears a short title, though it is only within the last few years that the practice has become uniform. Under a recent Ordinance, appointing the Attorney-General a commissioner to prepare a new and revised edition of the laws of the colony, power is given to him to number all the Ordinances with reference to the calendar year, and to add a short title where at present none exists.

(*i*) Private Bills are not treated separately.

(*j*) It has not been the practice to supply an explanatory memorandum on the introduction of a Bill.

IV.—Publication of Statutes.

(*a*) Publication in the Government *Gazette*; production of a copy by the Government printer; or, in the case of any Act or Ordinance prior to 1885, the production of the edition of the laws of the colony published in 1884 containing the enactment.

(*b*) Statutes are printed for publication in the Government *Gazette*, and separately.

(*c*) The statutes are published in a collected form at the end of each year.

(*d*) It has not been the practice in the past to do more than add a table of contents, though in some years a table showing the effect of the year's legislation on previous legislation has been published in the *Gazette* and Blue Book.

(*e*) The laws of the colony have been collected and published at irregular dates up to 1864, when a collective edition was published by Messrs. Sharpe and Choppin under the authority of the Government. A subsequent edition was published in 1884 by Mr. Choppin, the then Attorney-General, also under the authority of Government, and a new and revised edition is now in course of preparation by the present Attorney-General.

None of these editions comprise the Acts of the United Kingdom in force in the colony.

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(*f*) There is no edition of "Selected Statutes."

(*g*) Private Acts are published in the same manner as public Acts, except that adequate and timely notification by advertisement or otherwise of the parties intention to apply for the Ordinance is required before introduction into the Legislative Council.

V.—Revision of Statutes.

(*a*) See IV. (*e*), above. There is no regular machinery in existence for revision; but legislative provision is necessary in each case.

(*b*) The edition of 1884 of the laws of the colony shows the laws in force up to the end of that year, the contents being arranged chronologically.

VI.—Indexing of Statute Law.

The volumes of the edition of the laws of 1884 contain an index, but of a very incomplete character. Beyond this there is no general index of the laws of the colony.

VII.—Consolidation and Codification.

(*a*) On the occasion of the publication of the editions in 1864 and 1884, some attempt was made to consolidate the various laws in existence on a few subjects.

(*b*) The present Attorney-General, under the powers given him by the recently passed Ordinance appointing him a commissioner to prepare a new and revised edition, is attempting to further consolidate particular parts of the existing Statute law.

(*c*) There is a Civil Procedure Code (No. 3 of 1884) regulating the procedure in the Supreme Court at present in force. A Criminal Code, Criminal Procedure Code, and Evidence Code have been introduced by the Attorney-General, and are now under consideration. It is also contemplated to introduce a new Civil Procedure Code, to regulate procedure in the inferior as well as the superior courts. The Evidence Code is based on the Indian and Straits Evidence Code.

The two criminal codes are based on the codes now in force in St. Lucia and the Gold Coast, which were originally drafted by Mr. Justice Wright.[1]

VIII.—Subordinate Legislation.

Subordinate legislation, in the shape of rules or orders, is almost invariably prepared and passed by the Governor in Executive Council, and published in the Government *Gazette*, though occasionally the legislature entrusts this power to a particular officer.

[1] See above, p. 177, note 1.

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A collection of and index to the numerous and scattered rules and orders in force is now in course of preparation, and it is intended that reference to these rules and orders shall be made under the enactments authorizing them in the new edition of the laws when published.

SIERRA LEONE.[1]

I.—Common Law.

(*a*) The common law of England prevails in Sierra Leone. It seems to have been introduced under the following circumstances:—

On July 5, 1799, a charter was granted to a company known as the Sierra Leone Company, and under it a grant was made of that tract or district of land situate and being at Sierra Leone, West Coast of Africa, known by the name of the Peninsula of Sierra Leone. On August 9, 1808, a charter was granted to the said company, their successors, and assigns, and that tract, etc., known as the Peninsula of Sierra Leone was erected and created one independent separate colony by the name of the "Colony of Sierra Leone." Having been acquired by occupancy, not by conquest or cession, it is a plantation in the strict and general sense of the word, and the law of England came into force in the new settlement (see Clark's "Colonial Law," pp. 20 and 492–495).

(*b*) There is no law applying exclusively to particular races or creeds.

II.—Statute Law.

(*a*) The Statute law of the colony consists of Ordinances, based on the existing law of England, so far as local circumstances admit. Regulations are passed from time to time by the Governor in Council. The term "Governor in Council" means the Governor sitting with the following officials:—The officer commanding the troops, the Colonial Secretary, the Colonial Treasurer, and the Queen's Advocate.

(*b*) Imperial Acts are in some cases expressly applied to Sierra Leone or to the colonies generally.

By the local Ordinance, Supreme Court Ordinance No. 9 of 1881, s. 19, all Acts of general application in force in England on January 1, 1880, are in force in the colony.

Since then, when it is desired to bring an Imperial Act into force in the colony a Bill is introduced embodying its principles with such modifications as local requirements may demand.

(*c*) The Statute law of no other colony is in force in Sierra Leone.

(*d*) There is no code or other law of non-British origin.

[1] Prepared by the Hon. W. Clark, Acting Chief Justice.

SIERRA LEONE.

III.—Methods of Legislation.

(*a*) Bills are prepared by the Queen's Advocate who is the official draftsman.

(*b*) All measures are laid before the Executive Council, which now consists of five members instead of six (the Chief Justice being no longer a member of that Council), before being submitted to the Legislative Council. This body consists of the Governor, the Chief Justice, the officer commanding the troops, the Colonial Secretary, the Colonial Treasurer, the Queen's Advocate, and three non-official members.

(*c*) By standing order of the Legislative Council passed on November 18, 1892, it is provided by Order 40 that a printed copy of every Bill shall, in so far as may be possible, be sent to each member twenty-four hours at least before it is proposed to read it a first time, and by Order 41, after having been read a first time, every Bill shall, if such is possible, be published in the Sierra Leone *Royal Gazette.*

(*d*) A space of one week must elapse before the second reading, unless the standing orders of the Council are suspended. The council resolves itself into committee, and the clauses of the Bill are read one by one, and amendments, if any, are duly moved and seconded, and the clause stand as amended. After the clauses of the Bill are considered, the preamble, enacting clause, and short title are put to the vote, and the Bill is passed, and then printed and numbered.

(*e*) It is provided by Standing Order No. 44 that a Bill may be referred to a special committee at any time after second reading. This committee is chosen by the Council, and consists of at least three members, two of which form a quorum.

(*f*) No special steps are taken to secure uniformity of language. The Interpretation Act of 1889 is not in force in the colony.

(*g*) There is no annual session of the legislature. The Governor convenes a meeting of Legislative Council whenever he deems it desirable so to do.

(*h*) The Ordinances are numbered consecutively in relation to the calender year. Short titles have been conferred on all Ordinances passed since 1864.

(*i*) By the standing orders of the Legislative Council, Order 52, notification of the intention of any party to apply for a private Bill must be given to the clerk of Legislative Council, who advertises notice thereof at the expense of the party six times consecutively in the *Gazette*, or in such other manner as the Legislative Council may from time to time determine. No private Ordinance can be passed whereby the property of any private person may be affected in which there is not a

saving of the rights of her Majesty, and of all bodies politic and corporate, and of all other persons except such as are mentioned in the Ordinance and those claiming by from and under them. Private Acts or Ordinances are not separately numbered.

(*j*) Before moving the second reading of a private Bill the Queen's Advocate explains its provisions, and the reason for its introduction.

IV.—Publication of Statutes.

(*a*) Ordinances are promulgated by proclamation with the authority of the Governor, stating that her Majesty has not been advised to exercise her power of disallowance, and by publication in the *Gazette*.

The production of a copy duly stamped with the seal of the Registrar General to be received in all courts, and upon all occasions whatsoever as evidence of the original Ordinance (see Ordinance No. 6 of 1858, s. 3). And a copy purporting to be printed by the Government printer (see Ordinance No. 5 of 1871, s. 1).

(*b*) Ordinances are published by the authority of the Governor, under the direction of the Secretary of State for the Colonies.

(*c*), (*d*) The annual Statutes are not published in a collected form.

(*e*) No collective editions of the colonial Ordinances have been published either by the Government or private enterprise.

(*f*) There is no edition of "Selected Statutes."

(*g*) Private Ordinances are published in the same manner as public Acts.

V.—Revision of Statutes.

(*a*) The only revision of existing Ordinances is effected in the course of current legislation.

(*b*) There is no edition of "Revised Ordinances."

VI.—Indexing of Statute Law.

An index originally published in 1887, and prepared by the Chief Justice, Mr. F. F. Pinkett, has since been revised by the Registrar-General, Mr. A. Sharood. This index is arranged both chronologically and alphabetically. There is no stated interval within which it is revised. It includes both public and private Ordinances, and states the extent of the repeals. The date of the last edition is 1893.

VII.—Consolidation and Codification.

(*a*) A committee appointed to consider the question of consolidation have submitted their report, which has been adopted by the Legislative

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Council, and the matter is at present engaging the attention of the executive.

(*b*) The work is not yet in progress, but will he shortly undertaken.

(*c*) No codes are in force.

VIII.—Subordinate Legislation.

In some cases rules or orders are made by the Governor or department in pursuance of an Ordinance, and when so made are laid before the Governor in Council for approval; in other cases by the Governor with the consent of the Legislative Council. They are published after such approval in the *Gazette*, and thereupon come into force and effect. There is an index up to 1893 to be found at the end of Mr. Sharood's "Index of the Ordinances of the Colony of Sierra Leone."

STRAITS SETTLEMENTS.[1]

I.—Common Law.

(*a*) The common law of the Straits Settlements is the law of England, as it stood in 1826. Acts of Parliament passed since that year not being in force in this colony (unless made applicable or expressly adopted), amendments of the common law effected in England after 1826 have not, as a rule, taken effect here. But the law of England is subject, in its application to alien races established in these Settlements, to such modifications as are necessary to prevent its operating unjustly or oppressively on them (*per* Sir P. B. Maxwell, Chief Justice, in Choa Choon Neo *v.* Spottiswoode, approved by the Privy Council in Ong Cheng Neo *v.* Yeap Cheah Neo (L. R. 6 P. C. 38)).

The authority for introducing the law of England is the charter creating a Court of Judicature for Prince of Wales' Island, Singapore, and Malacca (Letters Patent of November 27, 1826), replacing a previous charter issued in 1807, which was applicable only to the Settlement of Prince of Wales' Island or Penang.

The charter does not expressly provide that the law of England shall be the law of the Settlements; but a few years after it came into operation it was held (by Sir Benjamin Malkin, R.) that "the introduction of the King's charter had introduced the existing law of England also, and abrogated any law previously existing"—and this principle has always been acted upon since, with the restriction referred to above respecting alien races.

(*b*) The following laws are applicable to particular races and creeds:—

[1] Prepared by Sir Lionel Cox, Chief Justice.

Law.	Subject.	Race or Creed.
Indian Act No. 15 of 1856 ...	Marriage of Hindoo Widows ...	Hindoos.
,, ,, 5 of 1865 ...	Marriage of Christians	Christians.
,, ,, 15 of 1865 ...	Marriage and Divorce of Parsees	Parsees.
,, ,, 21 of 1865 ...	Intestate Successions of Parsees	Parsees.

II.—Statute Law.

(*a*) The Statute law of the Straits Settlements consists mainly of—

(1) Acts of the Governor of India in Council passed before April, 1867, applicable to the Settlements, and not since repealed.

(2) Ordinances passed by the Legislative Council since April, 1867, when the Settlements were detached from India and formed into a separate colony under the authority of 29 & 30 Vict. c. 115.

(*b*) The Statutes of the United Kingdom passed after 1826, unless made applicable, do not operate in the Straits Settlements. With regard to Statutes passed before that year, it has been held that the charter of 1826 had the effect of introducing not only the common law, but also so much of the Statute law then existing in England as is of general and not merely local policy, and adapted to the conditions and wants of the inhabitants (*per* Sir P. B. Maxwell, *supra*). The legislature of the colony has, with respect to many matters, adopted the statutory law of England, by enacting Ordinances which nearly reproduce the main provisions of the English Acts on the same subjects. The following instances may be mentioned :—

Local Ordinance.	Act of Parliament.
Conveyancing and Law of Property Ordinance, 1886.	Conveyancing and Law of Property Act, 1881, and part of Vendors and Purchasers Act, 1872.
Bills of Sale Ordinance, 1886.	Bills of Sale Act, 1878.
Bankruptcy Ordinance, 1888.	Bankruptcy Act, 1883.
Merchandise Marks Ordinance, 1888.	Merchandise Marks Act, 1887.
Companies Ordinance, 1889.	Companies Act, 1862.

The Civil Law Ordinance, 1878, further contains a general provision to the effect that "in all questions which may arise with respect to the law of partnerships, companies, corporations, banks and banking, principals and agents, carriers by land and sea, marine insurance, average, life and fire insurance, and mercantile law generally, the law to be

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administered shall be the same as would be administered in England in the like case, at the corresponding period, as if such question had arisen or had to be decided in England."

(*c*), (*d*) No Statute law of any other colony is in force, nor is any code or enacted law of non-British origin in force in this colony.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the Attorney-General. He is appointed by the Secretary of State and responsible to the Governor. He is allowed clerical assistance. He is an official member of the Legislative Council, and introduces and supports measures proposed by the Government. His duties do not extend to measures introduced by non-official members.

(*b*) There is but one Legislative Chamber—"the Legislative Council"—consisting of official and non-official members appointed by the Crown, in accordance with the "Letters Patent passed under the Great Seal of the United Kingdom constituting the office of Governor of the Straits Settlements," and "Instructions under the Royal Sign Manual and Signet to the Governor of the Straits Settlements" of June 17, 1885, amended by Additional Instructions of December 7, 1887.

(*c*) The standing rules and orders of the Legislative Council do not require draft measures to be published before introduction. But no Bill can be read a second time before it has been published at least once in the Government *Gazette*, and no Bill can be "moved into Committee" unless it has been published twice in the *Gazette*.

(*d*), (*e*) The first reading of a Bill may be moved after notice given at a previous meeting, but Bills introduced by the Governor may be moved without notice. After the first reading, notice is given of a day on which the second reading will be moved. After the second reading, the council "resolves into a committee of the whole council," or the Bill may be referred to a select committee. In committee the Bill is examined section by section, and when settled it is reported to the council with or without amendments as the case may be. Notice may then be given of a day for the third reading. When the Bill has been read a third time and passed, it is presented to the Governor for his assent, which is signified by his signature after the title of the Bill, which then becomes an Ordinance, and takes effect on publication in the *Gazette*. But it remains subject to disallowance by the Queen, and such disallowance when signified to the Governor takes effect from the time when it is published by the Governor.

(*f*) Steps have been taken to secure uniformity of language and arrangement of laws. In 1867 an Ordinance was passed "for shortening

the language used in Acts of the Legislative Council and to provide for the interpretation of certain words in frequent use in written laws." The Ordinance was repealed and replaced by Ordinance I. of 1888 (the General Clauses Ordinance), which contains more extensive provision on the subject. With respect to arrangement of Statutes, the "Instructions passed under the Royal Sign Manual and Signet to the Governor of the Straits Settlements" contain the following rules :—

(1) All laws shall be called Ordinances, and the enacting words shall be "enacted by the Governor of the Straits Settlements with the advice and consent of the Legislative Council thereof."

(2) All Ordinances shall be distinguishable by titles and be divided into successive clauses or paragraphs consecutively numbered, and to every such clause there shall be annexed in the margin a short summary of its contents. The Ordinances of each year shall be distinguished by consecutive numbers commencing in each year with the number one.

(3) Each different matter shall be provided for in a different Ordinance, etc.

(*g*) There is no annual session of the legislature nor any fixed periods of session.

(*h*) Ordinances are distinguished by consecutive numbers as stated above. There is no reference to the regnal year. It is the practice to give a short title to each Ordinance, and this practice appears to have been followed since the creation of the Legislative Council in 1867.

(*i*) Private Bills are subject to the following rules contained in the "Instructions" :—No private Ordinance shall be passed whereby the property of any private person may be affected, without a saving of the rights of the Crown, or of all bodies politic and corporate, and of other persons except such as are mentioned in the Ordinance and those claiming by, from, or under them. The Governor shall not assent until proof be made before him that adequate and timely notification by public advertisement was made of the parties' intention to apply for such Ordinance; and a certificate under the Governor's hand is to be annexed to the Ordinance signifying that the notification has been given, etc. It is also provided in the Standing Orders that any person whose interests may be affected by a Bill may apply by petition to the Council to be heard by himself or by counsel, and to have witnesses examined upon the subject of the Bill. There is nothing to require private Ordinances being separately numbered.

(*j*) It is the practice to accompany a measure on introduction by

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an explanatory memorandum, the mover of a Bill delivering to the clerk a statement of the "Objects and Reasons," and this statement is printed with the Bill.

IV.—Publication of Statutes.

(*a*) Ordinances are promulgated by being published in the Government *Gazette* by authority of the Governor. Under "The General Clauses Ordinance, 1888," Courts of Justice "take judicial notice of all Ordinances, whether the same be of a public or of a private nature, and of all orders of the Governor in Council published in the Government *Gazette*."

(*b*) When a Bill has been passed, the clerk writes at the end of the Bill "Passed this day," giving the date, and presents it to the Governor for his assent. The Ordinance when assented to and signed by the Governor is numbered and published in the Government *Gazette*. No special form of publication is prescribed, but the *Gazette* is printed under official control at the Government printing office.

(*c*) At the commencement of each year, a complete collection of all Ordinances enacted in the preceding year is published by the Government.

(*d*) The periodical volumes of Ordinances published every year are accompanied by an index and table of contents, but there is no table showing the effect on previous legislation.

(*e*), (*f*) A collective edition of "Acts and Ordinances of the Legislative Council from April 1, 1867, to June 1, 1886, together with certain Acts of Parliament, Orders in Council, Letters Patent, and Indian Acts in force in the Straits Settlements," was published in 1886 by Mr. J. A. Harwood, one of the Registrars of the Supreme Court, for the Colonial Government.

In this collection Ordinances or parts of Ordinances repealed, which have expired or have had their effect, are omitted; and in each Ordinance amendments effected by subsequent legislation are embodied. There has been no similar publication since 1886. There is no other edition of the local laws, except the yearly collection of Ordinances published by the Government.

(*g*) Private Acts are published as other Acts, as above explained.

V.—Revision of Statutes.

(*a*) In 1889 steps were taken by the Government for the revision of an important branch of the statute law of the colony, *i.e.* of the Acts passed by the Legislature of India and applicable to the Straits Settlements. Ordinance 17 of 1889 (the Statute Law Revision

Ordinance) repealed all laws made by the Government of India before April 1, 1834, so far as they affect the colony, and empowered the Governor to appoint commissioners for the purpose of determining what Indian Acts were in force in the colony, and of revising and preparing the same for publication. The commissioners were authorized (s. 4) in carrying out the revision, "to omit all such enactments as have been repealed . . . or are inapplicable to the circumstances of the colony," and further "to make such formal alterations as may be necessary to make such enactments applicable to the circumstances of the colony." Commissioners were appointed, and in 1890 they published in one volume the "Indian Acts now in force in the Straits Settlements."

There has been no subsequent revision or exemption of the Statute law of the colony, and no machinery now exists for this purpose.

(*b*) The only collective edition of local laws is the one by Mr. Harwood referred to above. The contents are arranged chronologically.

VI.—Indexing of Statute Law.

There is a general Index to the Acts and Ordinances in force in the Straits Settlements, to the end of 1892, by Mr. Norton Kyshe, late Sheriff of Singapore, and now Registrar of the Supreme Court, Hongkong. The index gives all Acts and Ordinances, public and private, then in force, but does not include Statutes of the United Kingdom. It is accompanied by a chronological table of all Indian Acts applicable to the colony passed since 1835, and Ordinances passed since 1867, and the table shows how each enactment has been "repealed or otherwise determined in whole or in part." The last edition was issued at the end of 1893.

VII.—Consolidation and Codification.

(*a*), (*b*), (*c*) In 1871, the criminal law was codified, a penal code being passed (Ordinance IV. of 1871) which is a reproduction of the Indian code.

In 1892, a code of criminal procedure, also following the Indian code, was passed by the legislature (Ordinance VII. of 1892), but it has not yet come into operation.

No machinery exists now for the consolidation or codification of any branch of the law.

VIII.—Subordinate Legislation.

Under various Ordinances a power of making regulations is given either to the Governor, or to the Supreme Court, or to some corporation

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or department. The machinery for the preparation and passing of such measures varies according to the provisions of each Ordinance under which the power is exercised. But it may be said generally that the rules are prepared by the body or department concerned, and submitted to the Governor in Council for confirmation. In some cases the approval of the legislature is also necessary. It would not be possible to give a more definite answer without going into an examination of all the Ordinances which give a power of making rules.

As for the promulgation of these rules, etc., the usual course is by publication in the Government *Gazette*. There is no general collection of such measures of subordinate legislation, nor is there any index.

THE GERMAN CIVIL CODE.[1]

[*By Ernest J. Schuster, Esq., of Lincoln's Inn.*]

THE German Reichstag, after prolonged discussion, has, subject to certain modifications, accepted the draft code put before it by the Federal Council, as amended by the select committee appointed for its examinations, and the 1st of January, 1900, has been fixed as the day on which the German Civil Code will come into force, and replace the numerous systems of law which now exist in Germany.[2] This code is based on the successive labours of two Imperial Commissions, the first of which was appointed in 1877, and completed its work in 1887. The draft prepared by it was submitted to public criticism, and was revised and reconstructed by the second commission, who, having been appointed in 1890, published their draft in 1891. This second draft was again overhauled by the Federal Council, whose final product was submitted to the Reichstag in the beginning of 1896, and referred to a select committee, who recommended the acceptance of the code subject to certain amendments, which, according to general expectation, did not cause any difficulty, as all controversial points were settled by compromise. The quotations in the following pages refer to the Bill published by the Federal Council.

The proposed code deals with private law only, and excludes not only public law in the stricter sense, but also all regulations as to private rights, which are mainly determined from the point of view of public convenience. The rules relating to mines and minerals, to compulsory powers for taking lands or redeeming manorial rights, to the partition of common lands, and to other similar matters will therefore continue to be left to State legislation.

But, moreover, the code does not deal with the whole of private law. It omits, in the first instance, most of the matters which have already become the subjects of Imperial legislation. Amongst these mercantile

[1] A paper read at Lincoln's Inn Hall, on May 17, 1896.

[2] As to the previous history of German law and as to its present state, see my article in the *Law Quarterly Review*, vol. xii. pp. 17–34.

law is most prominent. The mercantile code will remain in force by the side of the civil code, but is now being revised by a separate commission, the intention being that the revised mercantile code should come into force at the same time as the civil code. Other Imperial Statutes, dealing with copyright, patents, trade-marks, and other similar matters will be left unaffected by the civil code.

There are also several matters which it is intended to regulate separately by Imperial legislation, and, therefore, to omit from the code, the most important being the law of insurance and the law regulating the relations between authors and publishers.

There are finally certain branches of law which are to remain in their present diversified condition because, "owing to their connection with the local and special economical conditions of the several German territories they are unfitted for uniform treatment."[1] To them belong the regulations relating to family settlements, feudal tenures and entails, emphyteusis, restrictions as to the subdivision of agriculture and forest land, to the use of streams and watercourses, sporting rights and other similar matters, as well as certain parts of the law of master and servant.

As regards the matters on which the existing Imperial law was to be retained outside of the code, or those which were reserved for future Imperial legislation, no fault can be found with those who were responsible for the delimitation of the work of the Codifying Commissions. Their inclusion would have materially increased the difficulties of the work and their exclusion hastened its completion, and will not result in much practical inconvenience. But the same cannot be said of the numerous subjects belonging to private law, which the municipal authorities refused to withdraw from the scope of State legislation. There seems to be no reason why local feeling about obsolete land tenures or feudal privileges should be treated with greater tenderness than local feeling about the forms of wills or the law of guardianship. A bolder mode of procedure would have materially contributed to the usefulness of the code and insured its popularity.

The contents of the code, as we have seen, therefore comprise the whole of German private law subject to the following exceptions:—

(*a*) Matters of a quasi-public nature (redemption of manorial rights, partition of common lands, expropriation, etc.), on which local law remains in force.

(*b*) Matters on which the existing Imperial law is to be retained—subject in some cases to certain modifications (mercantile law, patents,

[1] See the memorandum accompanying the Federal Council's edition (on p. 5 of C. Heymann's edition).

copyright, etc.)—and matters on which separate Imperial Statutes are intended to be prepared (insurance law, publishing law, etc.).

(*c*) Matters reserved for local regulation (exceptional tenures of land, etc.).

The draft is divided into five parts, containing respectively (1) general rules; (2) the law of obligations; (3) the law of things; (4) family law; (5) the law of inheritance.

This arrangement is the one usually adopted in the text-books on German common law, only that in these the law of things generally precedes the law of obligations. I do not think that it embodies the last word of scientific classification; but a new system would have aroused so much criticism that it was wiser to adhere to a scheme to which every German lawyer is accustomed.

I.—GENERAL PART.[1]

One of the great advantages, not only of a code, but also of a scientific system of law, is that it has a so-called general part. There are certain elements which are common to all legal facts; for instance, the question as to what constitutes a person—that is to say, an individual or unit capable of acquiring, enjoying and disposing of rights—is common to all branches of the law.

Again, all manifestations of human volition which intend to create, alter, transfer or release rights, are, or ought to be, subject to certain common rules without reference to the branch of law to which they refer. Such manifestations of human volition are known by a common name in German law, being called "Rechtsgeschäfte," but there is no name for them generally used in England. Sir Frederick Pollock used the term "Acts in the Law," and I shall in this paper use that expression.

The question as to the circumstances under which the capacity of persons to render themselves liable by their acts or omissions is modified or assumed to be non-existent, ought also to be determined by one common standard; but, where the law exists, and is taught in separate branches only, all these facts are necessarily dealt with inconsistently, and, to a certain extent, illogically.

In the same way a code as well as a scientific system of law is a means of establishing a recognized terminology. In England each Statute (subject to the small number of rules contained in the Interpretation

[1] The principal provisions of the general part are described and explained in Professor Eck's contribution to a collection of lectures on the various parts of the code, published by Guttentag, Berlin.

Acts) has its own terminology, and it is well known that a great deal of trouble is caused by conflicting terminology. Moreover, the terminology of the Statutes is not always accurate when generally recognized terms are used. Thus, for instance, the Bankruptcy Act, 1883, provides that settlements of property shall, in certain events, be void. The expression "void" is clearly distinguishable from "voidable," and the distinction was well recognized in 1883. Notwithstanding this fact, it was held in a recent case that the expression "void," in the section in question means "voidable."[1] In the Conveyancing Act, 1881, it is stated that a person being the donee of a power may by deed release such power. A married woman, according to the Interpretation Acts, is a person, and yet it is doubted by competent lawyers whether the section in question enables a married woman to release a power. Such doubts and difficulties are impossible in the case of a codified law having a properly constructed general part.

The general part of the proposed code contains seven chapters dealing respectively with the following subjects:—(1) Persons (natural and artificial); (2) things; (3) acts in the law; (4) interpretation of provisions as to time in Statutes, judicial orders, and acts in the law; (5) limitation of actions; (6) self-defence and extra-judicial enforcement of rights; (7) modes of giving security.

(1) Provisions as to Persons.

(*a*) *Natural Persons.*

Rules are given as to what constitutes the beginning of the legal existence of natural persons (s. 1), and as to the circumstances under which a presumption of death may be declared (ss. 13–20). According to the German common law, a person absent without news is not presumed to be dead until seventy years after his birth; but many of the modern codes and Statutes enable the interested parties to obtain a declaration presuming death after absence without news during a specified period. The code follows the latter system, ten years being the period fixed for ordinary cases, but this period only begins to run after the attainment of the age of twenty-one years by the person whose death is to be presumed. The period is shortened in the case of a person missed as a soldier taking part in a war, or as a passenger on a shipwrecked vessel, and the authors of the second draft have given similar facilities in the case of all persons generally who are missed after having been known to be in a position of special danger.[2]

[1] *In re* Vansittart ([1893] 2 Q. B. 377).

[2] In one respect the presumption of deaths, as declared by a competent court, will

This group of sections also deals with certain conditions under which the capacity to acquire, or to dispose of rights is modified. The law of the code, following, to a certain extent, the rules of Roman law, —which, I believe, are also retained in Scotland—divides the period of infancy into various stages. Children not having attained the age of seven years are placed in a different position to children who have attained that age. The ordinary time for attaining the age of majority is the age of twenty-one years, but there are means provided for declaring a person to be of full age on attaining the age of eighteen (ss. 2–5). There are also proceedings by which a person of full age may be restricted or restrained altogether in the disposal of his rights. The interdiction by which this can be attained is applicable in four cases—in the case of lunacy, debility of mind, extravagance, and dipsomania (s. 6). The interdiction on account of dipsomania and of general debility of mind is an innovation introduced in the second draft only. The status of *filius familias*, which is still of some importance in the German common law, though not to the same extent as in Roman law, has been dropped by the draft code.

SS. 8–11 deal with domicile, and s. 12 (which has been added in the second draft) establishes a person's right to his family name, and gives remedies for its protection, going much beyond the provisions of the existing law.

(*b*) *Artificial Persons.*

The incorporation of companies established for the purposes of profit belongs to mercantile law, and is not affected by the code. As regards other corporations the second draft has introduced an important innovation. As the law stands at present, in most of the German states incorporation is obtained by the authority of the local sovereign in each case. The draft code now provides that all non-trading corporations may obtain legal personality by conforming to certain rules as to their constitution and management, and by registering certain particulars in a local register to be provided for the purpose[1] (ss. 21–76). Legal personality is also given to charitable trusts, subject to certain conditions (ss. 77–87).

have a more far-reaching effect than an ordinary presumption. The marriage of the husband or wife of a person presumed to be dead will have the effect of dissolving the marriage with the person presumed to be dead, unless both parties to the second marriage know that the person presumed to be dead is still alive (s. 1331).

[1] Some difficulty arose as to political and religious associations; but this point was settled by compromise.

(2) Provisions as to Things.

Things are defined as including corporal objects only (s. 86). The general provisions relating to them contain the usual distinctions between fungible and non-fungible things (s. 87), and between consumable and non-consumable things (s. 88). They also define fixtures and appurtenances (ss. 89–94), and give rules, as to what are to be considered "fruits," viz. "the produce or other increase derived from a thing in accordance with its proper destination," and profits (ss. 95, 96), and as to the apportionment of fruits and profits between successive owners (ss. 97–99).

(3) Provisions as to Acts in the Law.

(*a*) *Capacity.*

Infants not having attained the age of seven years, persons interdicted on the ground of insanity, and persons who, for the time being—through morbid disturbance of their intellectual activity—are unable to exercise their volition, are absolutely incapable (ss. 100, 101). Other persons who, for any of the reasons referred to by me, when speaking of personal status, are deprived of the full disposing power, are capable, subject to certain restrictions only (ss. 102–111). It does not follow from these rules that special provisions are excluded according to which persons generally incapable, or partially incapable, may not be held liable for certain acts or omissions, but in the absence of special provisions the general rules apply.

(*b*) *Expression of Intention.*

The provisions as to mistake,[1] misrepresentation, fraud, duress, illegal immorality, and so on, with which we are familiar in books on the law of contract, are here given generally (ss. 112–120) as being applicable, not to contracts only, but also to deliveries, conveyances, wills, declarations, notices, and other Acts in the law by which rights are granted or taken away, and rules are also given as to form and interpretation of expressions of intention (ss. 121–129), and as to the effect of void and voidable transactions (ss. 130–140).

[1] S. 115 provides that a person who, when declaring his intention, was mistaken as to the subject-matter of such declaration of intention, may avoid the same, if it may be assumed that such declaration of intention would not have been made if the person making it had known the true facts and acted as a reasonable man. For instance, if a man intending to sell plated goods sells solid silver, he cannot undo the bargain if the price paid was a fair price for solid silver.

(*c*) *Agreements.*

The rules here given deal with non-obligatory agreements as well as with agreements which, according to English terminology, would be called contracts. The most important of these rules are those relating to the formation of agreements (ss. 141–152), and there is one to which I think it is specially important to call your attention. According to English law as well as according to Roman law an offer may be withdrawn before it is accepted. The inconvenience of this rule for mercantile purposes is becoming greater from day to day. Many business transactions are now entered into upon the faith of so-called firm offers, and the possibility of the withdrawal of such offer is a serious hindrance to business. To give an example:—An English cotton importer makes an offer to a cotton exporter in Calcutta for a certain number of bales at a certain price, on so-called cost, freight, and insurance terms. The Indian exporter, finding that he can accept the offer, secures the cotton as well as the freight insurance and exchange, and telegraphs his acceptance; but if the English importer has in the mean time telegraphed to him withdrawing the offer, and the telegram reaches him before his own is despatched, the bargain falls through. As a matter of fact, merchants do not avail themselves of the rule in question, and it would be considered dishonest to do so; but rules of law which give occasional advantage to dishonest people, and are not used by honest ones, are highly inconvenient and unjust. The German mercantile code, as regards mercantile transactions, had already altered the German common law rule, and now the provisions of the mercantile code have been adopted by the draft in respect of transactions generally. Some importance is also attached by German lawyers to the provision (s. 153), also adopted from the mercantile code, that agreements are to be interpreted in accordance with the requirements of good faith, having regard to the customs of daily life.

(*d*) *Conditions, Limits of Time.*

These sections deal with the effect of conditions precedent and subsequent, and of stipulations involving the inception or termination of a right at a given point of time (ss. 154–159).

(*e*) *Agency, Power of Attorney.*

Agency is here dealt with for the purpose of defining the extent to which a principal is bound by the acts of his agent (ss. 160–162), and of making provisions as to the revocation of an agent's power, and the right of third parties to assume a power to be unrevoked under

certain circumstances (ss. 163–172). Rules are also given as to the effect of acts undertaken by an agent in excess of his powers (ss. 173–176).

(*f*) *Declaration of Assent by Third Parties.*

The manner in which such assent must be declared is determined by ss. 178–180.

(4) Stipulations as to Time.

The object of these sections (ss. 182–188) is defined by s. 182, which provides that the rules of interpretation contained in the same are to be used in respect of all provisions as to spaces of time or points of time contained in any Statute, or any judicial order, or expressed in the course of any act in the law.

(5) Limitation of Actions.[1]

The fact of this chapter (ss. 189–220) having been included in the civil code shows that the limitation of actions is to be considered as part of the substantive law, and not as part of the law of procedure. It should, however, be pointed out that the distinction, unknown in English law, between the effect of lapse of time as to barring remedies and the effect of the lapse of time as to the acquisition of ownership is still preserved. The rules on the last-mentioned subject are contained in the law of things.

(6) Self-Defence, Self-Help.

Self-help is the enforcement of rights by actions which but for the special circumstances would be unlawful. In English law the landlord's right of distress, and the distraining of cattle "damage feasant," are the only circumstances which occur to me. The present German law on the subject is complicated and confused. The code provides that the taking of, injury to, or detention of chattels, and also the forcible detention of persons, is not unlawful, if any of these acts is done for the purpose of enforcing a right in the event of legal remedies not being available in the proper time, and there being danger that without

[1] The regular period is thirty years, but in respect of a large number of claims occurring in everyday life, it is reduced to two years. As regards claims arising from torts, the rule (which somewhat unsystematically is not given here, but under the head of Torts, s. 1836) is that they are barred within three years from the time at which the injured person knows of the damage and knows who is responsible for the same; thirty years after the damaging act the claim is barred in any event. This period seems somewhat long.

the exercise of self-help the enforcement of the right would be frustrated or seriously impeded (ss. 222–225).

An act committed by way of self-defence (which is defined to be "that mode of defence which is necessary for the purpose of averting an immediate unlawful attack against the person using such defence or any other person") is not to be unlawful under any circumstances (s. 221).

(7) Modes of giving Security.

The giving of security may be ordered under various circumstances. These sections contain the rules as to carrying out such an order (ss. 226–234).

II.—THE LAW OF OBLIGATIONS.

The old-fashioned four-fold division distinguishing between contracts, quasi-contracts and obligations, *ex delicto* and *quasi ex delicto*, has been abandoned by the code, except in so far as the second chapter deals exclusively with contractual obligations. The seven chapters into which this book is divided respectively deal with the following matters:—(1) The subject-matter of obligations; (2) contractual obligations; (3) the extinction of obligations; (4) the assignment of claims arising from obligations; (5) the transfer of liabilities arising from obligations; (6) joint liabilities and joint rights; (7) special classes of obligations.

(1) The Subject-matter of Obligations.

These rules assist the interpretation of agreements, and also include the law as to specific performance and damages[1] (ss. 235–242). It is provided with reference to contracts, as well as with reference to torts, that an obligation to give compensation for damage means, that the debtor must, if possible, by his acts establish the state of things which would have existed if there had been no breach of contract, or no tort had been committed. In the only event of there being no possibility of doing this effectually, money damages are substituted as a matter of necessity, but in certain specified cases the creditor may claim such money damages in the place of restitution or specific performance (ss. 243–245). This is practically only a re-enactment of the existing

[1] S. 241 provides that in any case in which the interest on a loan exceeds 6 per cent., the debtor may, notwithstanding any express stipulation to the contrary at any time, on giving six months' notice, repay such loan. This rule is of importance to holders of debentures in German companies bringing more than 6 per cent. interest.

law, and I hope that the clause dealing with the matter will at last convince those English lawyers who still adhere to the mistaken belief that the remedy of specific performance is exclusively English.[1] A further group of sections deals with the measure of damages and other methods of satisfying obligations, among which the obligation to give information and render accounts is specially dealt with (ss. 246–254); alternative obligations (ss. 255–258), part performance (s. 259), and performance by third parties (ss. 260–261) are also the subject of special provisions, as well as the rules as to the time and place of performance (ss. 262–266), and as to the conditions under which a right of lien may be exercised (ss. 267–268).

Another interesting point dealt with in this place is the effect of impossibility of performance arising subsequently to the creation of an obligation. English law, as I need not mention, does not in the absence of an express or implied agreement to the contrary exonerate a debtor, "though the performance was rendered impracticable by some unforeseen cause over which he had no control."[2] The draft, on the other hand, following the existing German law, and s. 145 of the Swiss Code of Obligations, enacts that a debtor's performance is excused in so far as the performance of his obligations has become impossible through circumstances for which he is not responsible, and which arose since the creation of the obligation (s. 269).

In the absence of special circumstances, or of stipulations to the contrary, the debtor is to be responsible for damage caused by his wilful act, or by the neglect of the diligence which is required for the common purposes of ordinary life (s. 270). But there are, of course, special rules as to certain contracts, as to which a smaller or a greater amount of diligence is required, and in some relations the debtor would be responsible, though the non-performance was entirely accidental.

The question as to the liability of principals for the acts of agents or servants employed on their behalf in the performance of an obligation, as regards the German common law, is still an open one. The code adopting the rules of French law, which have also been followed by the Swiss Code, declare that the principal is liable for the negligence of his agents to the same extent as he is liable for his own negligence (s. 272). Further sections deal with the effect of impossibility of performance caused by the debtor's fault (ss. 274–276), and the effect of delay on the debtor's (ss. 277–286) or creditor's part (ss. 287–298).

[1] On this point see *Law Quarterly Review*, vol. viii. p. 210–212.

[2] Ford *v.* Cotesworth (L. R. 4 Q. B. 134).

(2) Obligations arising from Contract.

This chapter contains an important innovation, inasmuch as it provides that it may be stipulated that a third party, not being a party to a contract, may by virtue of such contract acquire a right, which she or he may enforce by action (ss. 322–329). The general absence of the power to make a contract by which a third party derives an enforceable right has hitherto produced much practical inconvenience everywhere, and there are exceptions allowed in almost every system of law. According to English law, as is well known, policies of insurance may be taken out for the benefit of certain relatives under the Married Women's Property Act, and benefits may also be stipulated for for third parties under the Acts relating to friendly societies; certain persons not being parties to marriage settlements, also acquire enforceable rights under such settlements, and at one time it was thought that contracts entered upon by parents in favour of their children could be sued upon by such children. But this opinion has not been acted upon, and the law on the subject remains in an unsatisfactory condition, not due to any practical reasons, but simply to a metaphysical doctrine, according to which a contract cannot confer any benefits upon anybody not being a party to it. The advantage of modern codes is that they sweep away the cobwebs of rules based upon metaphysical dogmas.

The other parts of this chapter deal with the subject-matter of contracts as affecting the rights of the parties, and the effect of original impossibility or illegality (ss. 299–313), mutual contracts (ss. 314–321), deposits and penalties (ss. 330–339), and the effect of stipulations giving one of the parties a right to put an end to the contract (ss. 340–355).

(3) Extinction of Obligations.

This chapter deals with the extinction of obligations by performance (ss. 356–365); payment to or deposit with a third party (in the event of the creditor delaying the acceptance) (ss. 366–380), set-off (ss. 381–390), and waiver (s. 391).

(4) Assignment of Claims.

These sections (ss. 392–407) do not establish any new requirement as to the form of such assignments—but they enable the assignee to claim a formal deed of transfer at his own expense.

(5) Transfer of Liabilities.

The most important among the rules on this subject (ss. 408–413) is the one (s. 410) according to which a mortgagee having received

notice of the sale of the mortgaged property, and not having raised any objection during six months from the date of such notice, is deemed to release the original mortgagor's personal debt, and to accept the purchaser as debtor in his place.

(6) Joint Liabilities and Joint Rights

are the subject of the provisions contained in ss. 414–426.

(7) Special Classes of Obligations.

This chapter deals with sale and exchange (ss. 427–515), gifts (ss. 511–527), leases (ss. 528–590), borrowing of chattels (ss. 591–599), loans (ss. 600–603), contracts for service (ss. 604–620) and work (ss. 621–641), brokage contracts (ss. 642, 643), sale by auction (ss. 644–648), authorized agency (ss. 649–663), unauthorized agency (ss. 663–674), bailments (ss. 675–687), innkeeper's liabilities (ss. 688–691), non-mercantile partnership (ss. 692–727), joint property (ss. 728–745), annuities (ss. 746, 747), gaming contracts (ss. 748, 749), suretyship (ss. 750–762), accord and satisfaction (s. 753), acknowledgment of indebtedness (ss. 764–766), delivery orders (ss. 767–776), instruments passing by delivery (ss. 777–792), money had and received to the use of another (ss. 796–806), and torts (ss. 807–834).

Many of the provisions contained under these heads are adapted from mercantile law. This is the case more especially with some of the provisions relating to sales, joint accounts, delivery orders, and instruments passing by delivery. The gulf dividing mercantile transactions from others is thus in a certain measure bridged over. As regards the law of leases, one point deserves mention because it created a considerable amount of excitement in Germany. The first draft adopted the rule of Roman law which is expressed in the words, "A sale breaks a lease," and arises from the fact that in Roman law the contract of letting, whether relating to chattels or land, is a personal contract and creates a personal right only; if the lessor sells the land the purchaser may eject the lessee, who of course has his remedy in damages against the lessor. In many parts of Germany this is not the rule, and in these parts purchasers buy subject to existing leases. The second commission, yielding to the agitation on the subject, has now adopted the last-mentioned rule.[1]

[1] S. 523 provides that a lease (not being a lease for the life of the lessor or the life of the lessee) extending over a period exceeding thirty years may be determined by notice on either side after the lapse of thirty years. It remains to be seen whether this provision will not cause practical inconvenience.

The clauses relating to gifts will introduce important innovations in certain parts of Germany. In the places governed by French law, gifts exceeding a certain proportion of the donor's property are invalid. Roman law does not impose any restrictions as to quantity, but requires certain forms to be observed both in the case of gifts by immediate delivery and promises. The code removes all restrictions as to immediate gifts, but declares promises of gifts to be invalid unless evidenced by a formal document. It must, however, be borne in mind that not every contract which according to English law would be deemed a voluntary one is considered as containing the promise of a gift in accordance with the rules of German law, now embodied in the draft code. The waiver of a right is, for instance, not considered as a gift (s. 512). The obligation arising from the promise of a gift is different from other obligations in several respects thus the promisor may plead the *beneficium competentiæ* (s. 574), and may revoke the gift if the donee commits a serious offence against the promisor or a member of his family (s. 523). Gifts promised for the purpose of complying with a moral duty are irrevocable (s. 524).

Unauthorized agency (*negotiorum gestio*) according to the Roman rules, imposes certain obligations on the principal, if it was undertaken in the interest and according to the real or probable intention of the principal. In any other case the principal is bound to indemnify the unauthorized agent to the extent in which he was benefited. These principles, which are, to a certain extent, recognized in the Scotch law, are unknown to English law, the only exception being made in the case of salvage and towage. They are convenient, but on the whole it is perhaps better to be protected from the spontaneous efforts of persons not specially instructed to watch over our interests.

The provisions as to suretyship are another instance of the approximation of the German general law to the mercantile law. According to the German common law a surety is entitled to the *beneficium excussionis;* the mercantile law as regards mercantile guarantee excludes this defence. The draft code excludes it in certain events, but not generally. The events are: express waiver, difficulty in suing the principal debtor on account of a change of domicile having occurred since the date of the original contract, the bankruptcy of the principal debtor, and also the probability that the creditor would not receive the amount of his debt by enforcing a judgment against the principal debtor. The much-disputed question as to whether the acknowledgment of a debt is an act in the law creating an independent obligation has been decided in the affirmative. In the same way an

abstract promise to pay is binding on a debtor. In both cases, however, the promise must be made in writing.

The whole of the Law of Torts is contained in thirty-one sections. There is a general section according to which every person who wilfully or negligently injures the life, the health, the liberty, the property or any other right of another without lawful excuse, or who violates a statutory provision intended for the protection of another, must compensate such other for all damage thereby caused to him. The special provisions deal with slander and libel, seduction, intentional damage caused to another, damage done by animals not kept under proper control, damage done by game, damage done by destruction of buildings erected without proper precautions, and damage done by government officials through the wilful or negligent violation of their duties, and assault or other injuries to the person.

One of the sections belonging to this branch of the subject will puzzle the judges considerably. Some of the wrongful acts I have mentioned, as a general rule, do not impose any liability on the author unless he has been acting wilfully or negligently, but the clause in question provides that any person not liable under the sections referred to, on the ground of not having acted wilfully or negligently, shall yet be liable, if under the circumstances of the case, taking into account the economical position of the parties, it seems equitable, that such liability should be imposed. The defendant is, however, to be entitled to the *beneficium competentiæ*. In the same way a party not liable on the ground of want of capacity, is to be liable under the above-mentioned circumstances unless damages can be recovered from a party whose duty it was to keep the offender under his control. The latter provision is taken from the Swiss Code, but the former establishes a new principle which, as far as I know, has not hitherto existed in any system of law. If, for instance, a person's carriage runs over another person, although every precaution has been used by the driver, the owner of the carriage may be declared liable, if it seems more equitable that he should suffer the loss. The difficulty in such cases will, in my opinion, frequently consist in the question how far the chain of causation is to be carried back.

The capacity for torts is different from the general capacity to which I have referred in my observations relating to the general part. Persons being in a state of mind excluding the free exercise of volition are not responsible for any damage caused in such a state of mind, unless they have produced it themselves by the use of intoxicants or narcotics. Children under seven are not responsible for any damage, and infants between seven and eighteen are not responsible if it can be shown that

at the time of acting in the manner complained of they were without the necessary intelligence. Masters are not responsible for the wrongful acts of their servants or agents, unless they have been negligent in the selection or superintendence of such servants or agents.

III. LAW OF THINGS.[1]

In this part there are several very striking features. Sir Frederick Pollock, in an article on the Vocation of the Common Law (*Law Quarterly Review*, vol. xi. p. 323), ascribes great courage to Professor Holland for having put possession before ownership in his system of jurisprudence. The same quality must be held to distinguish the authors of the code, as the chapter on possession is the first included in the law of things. But they show still greater boldness in throwing overboard the much discussed Roman theory of possession. The Romanists distinguish between detention and possession; possession is not called by that name unless the possessor uses his rights *animo domini*. The Germanic possession is more analogous to our seisin, and has now been recognized as possession in the sense of the code; this innovation was introduced in the second draft only. It must, however, be noticed that the Roman theory of possession could not be entirely dispensed with; for the purposes of acquiring prescriptive rights, the *animus domini* is still required, and in order to make this clear the code introduces a new word, *ownership possession*, which now corresponds to the Roman possession.

Another distinguishing feature of this part of the code is the separate treatment of the rules relating to realty, which is entirely Germanic. Five of the nine chapters included in this part deal exclusively with the law of real property, whilst the other chapters contain rules applicable to personal chattels as well as to realty. The second chapter, which contains general provisions as to rights relating to real property, establishes the proposition that no change in the ownership of real property and no charge imposed on land, and no transfer or release of any such charge is to be valid unless it be registered in the Land Register. For a great many parts of Germany this will be a most important innovation. As regards chattels, ten years' ownership possession in good faith gives the property to the possessor; continuous possession is presumed if possession can be proved at the beginning and at the end of the period. As regards real property, however, long possession at the utmost only establishes a claim to be registered as owner. No person can acquire

[1] See Professor Fischer's contribution to the collection of lectures published by Guttentag, Berlin.

a prescriptive title to land during the lifetime of the registered owner. But a thirty years' ownership possession after the death of the registered owner establishes a claim to be entered on the register, subject to the same rules as those governing the acquisition of property in chattels by lapse of time.

The fourth chapter deals with what in Roman law is called superficies. The right of a person acquiring the superficies corresponds exactly to what in popular opinion is erroneously believed to be the right of a lessee holding under a building lease in England, that is to say, the owner of the superficies has the full rights of a beneficial owner in respect of the building; the only difference is that the owner of the superficies has a perpetual right.

The fifth chapter deals with easements, in respect of which it should be noticed that the German law, following the Roman law, includes usufruct, that is to say, the right to enjoy the income or occupation of the property during a time limited either by the duration of a life or lives, or the lapse of a fixed period of years, among easements.

As usufruct relating to real property is considered an easement, the code also gives the rules relating to usufruct in respect of rights relating to the whole estate of a deceased person, though perhaps they do not belong here in strict logical order. It is the German custom, when giving the income of property to persons during their lives, to do without the intervention of trustees, and to allow them to have the possession of the property whilst they are enjoying the income. It is, however, provided that in the event of the person entitled to the usufruct endangering any of the owner's rights, the owner is entitled to claim security.

The sixth chapter deals with rights of pre-emption, the seventh with periodical payments charged on land. The possibility of imposing such charges, which is very familiar to English lawyers, is quite unknown to Roman law, and its recognition by the authors of the code is another proof of the fact that they have not neglected to adopt any useful institutions derived from Germanic sources.

The eighth chapter deals with mortgages. A mortgage in German law does not transfer the property to the mortgagee, and gives him no right of sale; the mortgagee is entered as mortgagee on the register, and in case of default has a right to apply to the court for a public sale of the property, but he can neither sell himself, nor go into possession, nor appoint a receiver nor foreclose. I mention this as an instance of the fact which is so frequently overlooked by foreign lawyers as well as by English lawyers, that things called by the same name or corresponding terms in different languages are sometimes very different in their real nature.

The ninth chapter deals with the pledging of chattels and the pledging of rights. The code has perpetuated the rule of Roman law that a chattel cannot be pledged unless it is delivered to the pledgee. There are not wanting lawyers in Germany who look with jealousy on the English institution of bills of sale, but, fortunately for their countrymen, their wishes were disregarded by the authors of the code. The fact, that mortgages relating to rights are included in the law of things, shows the logical difficulties arising through the separation of things from obligations. There is, in fact, no reason why an obligation, considered as a part of property, transferable and protected against agression from any quarter, should not be considered a thing.

IV.—FAMILY LAW.

This part is divided into three chapters, of which the first deals with the law of husband and wife, the second with the law of parent and child, and the third with the law of guardianship. In some of the German States it was hitherto possible to sue for specific performance of a promise to marry; this will no longer be the case when the code is in force. Damages may be recovered for breach of promise, but only to the extent of the expenditure incurred or the liabilities undertaken in view of the projected marriage, and only in so far as such expenditure or the undertaking of such liabilities was reasonable under the circumstances of the case.

The provisions as to the celebration of marriages are mainly those of the Imperial Statute of 1875, by virtue of which marriage by a Government official is made compulsory, and religious marriage prior to the celebration of the civil marriage is forbidden. The Act of 1875 imposed certain conditions relating to the age and status of the parties, and the consent of persons placed in authority over them, but left it to the State laws to decide as to the effect of non-compliance with these conditions. The code now lays down definite rules on this subject, thereby establishing uniformity in a matter in which there is now considerable diversity.

It will be somewhat difficult to interpret one of the provisions, according to which a marriage may be avoided by one of the parties, if, at the time of the celebration of the marriage, he or she was mistaken in respect of certain essential points relating to the person or to the circumstances of the other party (s. 1316).

Whether a marriage be void or voidable, such children as would have been legitimate if the marriage had been valid, are deemed to be legitimate unless both husband and wife at the time of the marriage

knew the marriage to be void, or unless the form of celebration did not conform to the provision of the law. This rule also applies to the children of bigamous marriages. The children in such cases are in the same position as children of divorced persons.

As regards the effect of marriage on property,[1] the varieties of law at the present moment are innumerable. In broad outline there are three main systems—the Roman dotal system, the Saxon system of Community of Administration, and the system which is known as Community of Goods; the latter is sub-divided into general community of goods, community of moveables, and community of acquisitions. There is also a hybrid system in which there is community of administration during the marriage and community of goods at death. The draft establishes community of administration as a general rule; under that system the wife's property, not specially reserved as separate property, passes into the husband's administration, and he becomes entitled to the income during his life, but the property is not available for his creditors. The right to administer ceases in the event of the husband's becoming bankrupt, and in several other events specified in the code. On any such event, and also on the dissolution of the marriage by death or divorce, the wife or her representatives resume possession. The husband and wife may by marriage contract, which may be ante-nuptial or post-nuptial, exclude the regular system, but any stipulations depriving the husband of his right of administration is not effective unless entered in a register to be provided for the purpose. The marriage contract may state that the parties wish to adopt general community of goods, or community of moveables, or community of acquisitions, and the draft provides as to the effect of any such stipulation. If other terms are adopted they must be set out in full.

The grounds for divorce are adultery, certain specified acts of immorality, attempted murder of the petitioner, and wilful desertion,[2] and a divorce may also be obtained if the respondent "by a grave violation of the duties of married life, or by dishonourable or immoral conduct has caused the marital relation to be so deeply disturbed, that the continuance of the marriage would be a hardship to the petitioner." A wife having been divorced on the ground of a matrimonial offence may be ordered to resume her former name. A person divorced on the ground of adultery may not marry the person with whom the adultery has been committed.

[1] See Professor Schroder's contribution to the above-mentioned collection of lectures.

[2] The draft also made lunacy a ground of divorce, subject to certain restrictions, but the select committee of the Reichstag removed the clause in question, which, however, was re-instated by the full house, and now forms part of the code.

The chapter dealing with the law of parent and child contains the rules as to legitimacy, the mutual duties as to maintenance, and the powers and duties of parents. It also regulates the rights of illegitimate children, which in relation to their mother and her relations have the same position as legitimate children and must be entirely maintained by their father till they have reached the age of sixteen years. They are legitimated by the subsequent marriage of their parents,[1] or on application of the father by order of an administrative authority. Provisions are also inserted in respect of the adoption of children.

The provisions as to guardianships are modelled on the Prussian law of 1870. The rules as to curators contain nothing striking.

V.—LAW OF INHERITANCE.

This part has chapters relating respectively to intestate succession, rights and liabilities of heirs, testamentary dispositions,[2] contracts relating to the devolution on death, legitim, incapacity to inherit, waiver of claim to inherit, and certificates as to devolution of property on death. This terminology will already show that the Roman system has been adopted, according to which the natural heirs or those appointed by testamentary dispositions take over the whole estate, and are personally liable for debts and legacies if they accept the inheritance; the liability is unlimited, unless an inventory be made and filed within a certain period, in which event the liability is limited to the amount of the property shown on the inventory. The power to dispose of property by will is limited by the right of legitim, to which persons standing in certain relations to the testator are entitled. But the right to legitim may become forfeited by certain acts, or by certain conduct of the party entitled.

The Roman law of inheritance also contained a number of additional rules partly of a merely formal nature, but partly also of material importance. To the latter class belongs the provision that contracts as to the devolution of the estate of a deceased person made during his or her lifetime are of no effect. This rule is still in force in many parts of Germany, but has been set aside by the draft code, which especially regulates the law relating to contracts as to the devolution of property on death. Other rules of Roman law have been adapted to modern needs or removed altogether. An innovation was introduced

[1] See above, p. 21, as to Ceylon; and below, p. 233, as to New York State.

[2] Both drafts required a notary or judicial officer to be present at the execution of a will, but the Reichstag has added a clause by virtue of which unattested holograph wills will be valid.

in favour of creditors and legatees, who will be able to have the estate administered by a curator appointed by the court, whilst under the former law the only method by which creditors were able to obtain control of the estate was the initiation of bankruptcy proceedings. The present right as to legitim varies much in different parts of Germany. According to French law a father leaving him surviving three or more children, or the issue of deceased children, if there were three or more children, cannot dispose of more than one-fourth of his property by will. And a testator, leaving no children surviving him, but one or several ancestors, cannot dispose of more than half of his property by will. The draft does not adopt this far-going interference with private liberty, but it provides that the right to legitim shall extend to one-half of the share which the person entitled would have taken if the testator had died intestate.

I have now given a sketch of the most important parts of the code, but I ought to mention one fact more. It has been seen that as regards many important branches of the law there are some very wide clauses giving a large discretion to the judges, and the new German civil law will not be complete until the judges and text-book writers have settled the limits and the direction of such discretion. I include the text-book writers because in Germany precedents are not binding, and text-books have often more authority than cases, but yet in the course of time the practice of the Courts becomes stereotyped, and it is then only that the law is comparatively complete. The universal experiences of countries in which the law is codified shows that it is a mistake to oppose codified law and case law. There is no opposition between codified law and case law. The true opposition is between codified law and scattered Statute law.[1] Case law is a necessary complement to all, but the case law which grows out of a well ordered code is in itself harmonious and symmetrical, whilst case law grafted on a multitude of Statutes, cannot possibly be consistent or compendious. The best tailor cannot make well-fitting clothes for a person whose anatomical proportions are varied and discordant.

But this is not the only advantage of codification. There is no doubt that the lay public has greater confidence in a codified law, of which it can see and trace the outlines, and from which passages may be quoted to them by their advisers. Who can give chapter and verse to a lay client when the decision of a question depends on a combination of numerous Statutes and analogies with decided cases which are visible to practised eyes only?

[1] On this point see the observations of Cave, J., in *In re* Bellencontre [1891], 2 Q. B. 122, 137.

There is one further advantage of codification on a large scale which is sometimes overlooked. Like a removal from one house to another, it is an excellent opportunity for getting rid of accumulated lumber. The progress of law never keeps pace with the progress of economic institutions. The reasons which, though mistaken, yet seemed plausible to a past generation are now empty assertions of non-existent facts. Yet a good part of the law rests on these discarded reasons, and much of it cannot be altered without making confusion worse confounded. A code will sweep away all this rubbish without trouble or difficulty and bring about that state of things which it is almost a truism to declare the best—I mean the state of things when every rule of law can be justified on the ground that it is at least *intended* to exist for the convenience of mankind.

Yet I do not think that codification at the present moment is practicable or desirable in England. Sir Courtenay Ilbert, in the most interesting paper read by him in this hall some weeks ago,[1] has pointed out that the great motive which induced some of the continental nations to codify their law was a desire for unification rather than a wish for codification. As regards Germany the evidence for this proposition is overwhelming. The great inducement of those who have taken part in this great work or who have encouraged or supported it has been the desire to remove an important element of separation and to introduce a powerful uniting agent into the life of the German nation.

Germany is riper for codification than England, because the scientific arrangement of legal facts is more advanced there than here. Codification on a large scale cannot be brought about before the material to be codified has been sifted and arranged, and before the facts, which are common to all the multitudinous branches and departments of law which are now being taught and written on, are recognized and brought together as common facts to be dealt with in a uniform way.

When legal science will have systematized the whole of English law in this manner, the question of codification will be ripe—not one moment before. This is not the place or the time to make any suggestions as to the manner of carrying out such a scheme; but to consider it will not be an unworthy object of the activity of the Society for Comparative Legislation.

[1] See next page.

APPLICATION OF EUROPEAN LAW TO NATIVES OF INDIA.[1]

[*By Sir Courtenay Ilbert, K.C.S.I.*]

THIS paper arises out of a request which was made to me by the Jurisprudence Committee of the Society of Comparative Legislation to write a note on the extent to which European law applies to natives of India. The problem requires a little definition. I read India as meaning British India, and as not including either French or Portuguese India, or the territories of native states. And I understand European law as meaning practically English law, common or statutory, and including such enactments of the Indian legislatures as are based upon principles of the English law, though modified by reference to local circumstances and by native laws and customs.[2]

English law was introduced into India by the charters under which courts of justice were established for the three Presidency towns of Madras, Bombay, and Calcutta. The charters introduced the English common and Statute law in force at the time, so far as it was applicable to Indian circumstances. The precise date at which English law was so introduced has been a matter of controversy. For instance, it has been doubted whether the English Statute of 1728, under which Nuncomar was hung, was in force in Calcutta at the time of his trial, or of the commission of his offence. So also there has been room for

[1] A paper read before the Society of Comparative Legislation.

[2] Among the most accessible authorities on the subject of this note are Harington's "Analysis of the Bengal Regulations," the introduction to Morley's "Digest of Indian Cases," the editions published by the Indian Legislative Department of the Statutes relating to India, of the general Acts of the Governor-General in Council, and of the Provincial Codes, and the Index to the enactments relating to India (of which there appears to have been no edition since 1883). The numerous volumes of reports by Select Committees and by the Indian Law Commissioners contain a mine of information which has never been properly worked.

The best books on existing Hindu law are those by J. D. Mayne and by West and Bühler, written from the Madras and Bombay points of view respectively. Sir R. K. Wilson has recently published a very useful "Digest of Anglo-Mahommedan Law." There are books by Mr. C. L. Tupper and by Sir W. H. Rattigan on the customary law of the Punjab. I have seen some notes on the Buddhist law of Burma by Mr. Justice Jardine, but I do not know where they are published.

argument as to whether particular English Statutes, such as the Mortmain Act, are sufficiently applicable to the circumstances of India as to be in force there.[1] But Indian legislation, and particularly the enactment of the Indian Penal Code, has set at rest most of these questions.

George II.'s charter of 1753, which reconstituted the mayors' courts in the three presidency towns of Madras, Bombay, and Calcutta, expressly excepted from their jurisdiction all suits and actions between the Indian natives only, and directed that such suits and actions should be determined among themselves, unless both parties should submit them to the determination of the mayor's court. But, according to Mr. Morley, it does not appear that the native inhabitants of Bombay were ever actually exempted from the jurisdiction of the mayor's court, or that any peculiar laws were administered to them in that court.[2]

It was not, however, until the East India Company took over the active administration of the province of Bengal that the question of the law to be applied to natives assumed a seriously practical form. In 1771 the Court of Directors announced their intention of "standing forth as Diwan," in other words, of assuming the administration of the revenues of the province, a process which involved the establishment, not merely of revenue officers, but of courts of civil and criminal justice. In the next year Warren Hastings became Governor of Bengal, and one of his first acts was to lay down a plan for the administration of justice in the interior of Bengal. What laws did he find in force? In criminal cases the Mahommedan Government had established its own criminal law, to the exclusion of that of the Hindus. But in civil cases Mahommedans and Hindus respectively were governed by their personal laws, which claimed divine authority, and were enforced by a religious as well as by a civil sanction.

The object of the East India Company was to make as little alteration as possible in the existing state of things. Accordingly the country courts were required, in the administration of criminal justice, to be guided by Mahommedan law. But it soon appeared that there were portions of the Mahommedan law which no civilized government could administer. It was impossible to enforce the law of retaliation for murder, of stoning for sexual immorality, or of mutilation for theft, or to recognize the incapacity of unbelievers to give evidence in cases affecting Mahommedans. The most glaring defects of Mahommedan law were removed by regulations, and an interesting picture of the criminal law, so patched and modified, as it was administered in the

[1] See Mr. Whitley Stokes's preface to the first edition of "The Older Statutes relating to India," reprinted in his "Collection of Statutes to India" (Calcutta, 1881).

[2] Morley's "Digest," introduction, p. clxix.

country courts of Bengal about the year 1821, is given in Mr. Harington's "Analysis of the Bengal Regulations."[1] The process of repealing, amending, and supplementing the Mahommedan criminal law by enactments based on English principles went on until the Mahommedan law was wholly superseded by the Indian Penal Code in 1860.[2] A general code of criminal procedure followed in 1861, and the process of superseding native by European law, so far as the administration of criminal justice is concerned, was completed by the enactment of the Evidence Act of 1872.

With respect to civil rights, Warren Hastings' plan of 1772 directed, by its twenty-third rule, that "in all suits regarding marriage, inheritance, and caste, and other[3] religious usages and institutions, the laws of the Koran with respect to Mahommedans, and those of the Shaster with respect to Gentus (Hindus) shall be invariably adhered to." "Moulavies or Brahmins" were directed to attend the courts for the purpose of expounding the law and giving assistance in framing the decrees.[4]

The famous "Regulating Act" of 1773 empowered the Governor-General and Council of Bengal to make rules, ordinances, and regulations for the good order and civil government of the settlement at Fort William (Calcutta) and other factories and places subordinate thereto, and in 1780 the Government of Bengal exercised this power by issuing a code of regulations for the administration of justice, which contained a section (27) embodying the provisions and exact words of Warren Hastings' regulation. A revised code of the following year re-enacted this section with the addition of the word "succession."

The English Act of 1781 (21 Geo. 3, c. 70), which was passed for amending and explaining the Regulating Act, recognized and confirmed the principles laid down by Warren Hastings.

Whilst empowering the Supreme Court at Calcutta to hear and determine all manner of actions and suits against all and singular the inhabitants of Calcutta, it provided (s. 17) that "their inheritance and succession to lands, rents, and goods, and all matters of contract and dealing between party and party, shall be determined in the case of Mahommedans by the laws and usages of the Mahommedans, and in

[1] See also Sir R. K. Wilson's introduction to the "Study of Anglo-Mahommedan Law," p. 113; and for a description of the criminal law of India as it existed in 1852 see the evidence given in that year by Mr. F. Millett before the Select Committee of the House of Lords on the East India Company's Charter.

[2] It had been previously superseded, in 1827, by a written code in the Bombay Presidency (Morley, "Digest," introduction, pp. cliv., clxxvi.).

[3] The use of "other" implies that marriage and inheritance were treated as religious institutions.

[4] This direction was repealed by Act 11 of 1864.

the case of Gentus (Hindus) by the laws and usages of Gentus; and where one only of the parties shall be a Mahommedan or Gentu, by the laws and usages of the defendant." It went on to enact (s. 18) that "in order that regard should be had to the civil and religious usages of the said natives, the rights and authorities of fathers of families and masters of families, according as the same might have been exercised by the Gentu or Mahommedan law, shall be preserved to them respectively within their said families; nor shall any acts done in consequence of the rule and law of caste respecting the members of the said families only be held and adjudged a crime, although the same may not be held justifiable by the laws of England." Enactments to the same effect have been introduced into numerous subsequent English and Indian enactments.[1]

These provisions of the Act of 1781, and the corresponding provisions of the Act of 1797 relating to the Recorders' Courts of Madras and Bombay (afterwards superseded by the Supreme Courts, and now by the High Courts), are still in force, but are not included in the list of English statutory provisions which, under the Indian Councils Act of 1861 (24 & 25 Vict. c. 67), Indian legislatures are precluded from altering. Consequently they are alterable, and have in fact been materially affected, by Indian legislation. For instance, the native law of contract has been almost entirely superseded by the Contract Act of 1872 and other Acts. And the respect enjoined for the rights of fathers and masters of families and for the rules of caste did not prevent the Indian legislature from abolishing domestic slavery or suttee.

A Bengal Regulation of 1832 (VII. of 1832), whilst re-enacting the rules of Warren Hastings which had been embodied in previous regulations, qualified their application by a provision which attracted little attention at the time, but afterwards became the subject of considerable discussion.[2] It declared that these rules "are intended and shall be held to apply to such persons only as shall be *bonâ fide* professors of those religions at the time of the application of the law to the case, and were designed for the protection of the rights of such

[1] See *e.g.* 37 Geo. 3, c. 142 (relating to the Recorders' Courts at Madras and Bombay), ss. 12, 13; Bombay Regulation IV. of 1827, s. 26; Act IV. of 1872, s. 5 (Punjab), as amended by Act XII. of 1878; Act III. of 1873, s. 16 (Madras); Act XX. of 1875, s. 5 (Central Provinces); Act XVIII. of 1876, s. 3 (Oudh); Act XII. of 1887, s. 37 (Bengal, N. W. P. and Assam); Act XI. of 1889, s. 4 (Lower Burma); and clauses 19 & 20 of the Charter of 1865 of the Bengal High Court, the corresponding clauses of the Madras and Bombay Charters, and clauses 13 & 14 of the Charter of the North Western Provinces High Court.

[2] See Morley's "Digest," introduction, pp. clxxiii., clxxxiii.

persons, not for the deprivation of the rights of others. Whenever, therefore, in any civil suit, the parties to such suits may be of different persuasions, where one party shall be of the Hindu and the other of the Mahommedan persuasion, or where one or more of the parties to such suit shall not be either of the Mahommedan or Hindu persuasion, the laws of those religions shall not be permitted to operate to deprive such party or parties of any property to which, but for the operation of such laws, they would have been entitled. In all such cases the decision shall be governed by the principles of justice, equity, and good conscience; it being clearly understood, however, that this provision shall not be considered as justifying the introduction of the English or any foreign law, or the application to such cases of any rules not sanctioned by those principles."

In the year 1850 the Government of India passed a law (XXI. of 1850) of which the object was to extend the principle of this regulation throughout the territories subject to the government of the East India Company. It declared that, "So much of any law or usage now in force within the territories subject to the government of the East India Company as inflicts on any person forfeiture of rights or[1] property, or may be held in any way to impair or affect any right of inheritance, by reason of his or her renouncing, or having been excluded from the communion of any religion, or being deprived of caste, shall cease to be enforced as law in the courts of the East India Company, and in the courts established by Royal charter within the said territories."

This Act, which was known at the time of its passing as the Lex Loci Act,[2] and is still in force, excited considerable opposition among orthodox Hindus as unduly favouring converts, and has quite recently been criticized from the Hindu point of view with respect to its operation on the guardianship of children in a case where one of two parents had been converted from Hinduism to Mahommedanism.

It will have been observed that Warren Hastings' rule and the enactments based upon it apply only to Hindus and Mahommedans. There are, of course, many natives of India who are neither Hindus nor Mahommedans, such as the Portuguese and Armenian Christians, the Parsees, the Sikhs, the Jains, the Buddhists of Burma and elsewhere, and the Jews. The tendency of the courts and of the legislatures has been to apply to these classes the spirit of Warren Hastings' rule

[1] An attempt has recently been made to argue that this phrase was an accidental misprint for "rights *of* property." But there seems no foundation for this suggestion.

[2] This title is a misnomer. It was properly applied to other provisions which were subsequently dropped. See the evidence of Mr. Cameron before the Select Committee of the House of Lords in 1852.

and to leave them in the enjoyment of family law, except so far as they have shown a disposition to place themselves under English law.

When Mountstuart Elphinstone legislated for the territories then recently annexed to the Bombay Presidency, Anglo-Indian administrators had become aware that the sacred or semi-sacred text-books were not such trustworthy guides as they had been supposed to be in the time of Warren Hastings, and that local or personal usages played a much more important part than had previously been attributed to them. Accordingly the Bombay Regulation deviated from the Bengal model by giving precedence to local usage over the written Mahommedan or Hindu law.[1] Regulation IV. of 1827 (s. 26), which is still in force in the Bombay Presidency, directed that, "The law to be observed in the trial of suits shall be Acts of Parliament and Regulations of Government applicable to the case; in the absence of such Acts and Regulations, the usage of the country in which the suit arose; if none such appears, the law of the defendant, and, in the absence of specific law and usage, justice, equity, and good conscience alone." The same principle has since been applied to the Punjab, which is pre-eminently the land of customary law, and where neither the sacred text-books of the Hindus nor those of the Mahommedans supply a safe guide to the usages actually observed. In this province the Punjab Laws Act expressly directs the courts to observe any custom applicable to the parties concerned, which is not contrary to justice, equity, or good conscience, and has not been altered or abolished by law, or declared by competent authority to be void.

Native Christians have for the most part placed themselves, or allowed themselves to be placed, under European law. As long ago as 1836 the Armenians of Bengal presented a petition to the Governor-General, in which, after setting forth the destitution of their legal condition, they added, "As Armenians have ceased to be a nation since the year of our Lord 1375, and no trace of their own law is now to be discovered,[2] your petitioners humbly submit that the law of England is the only one that can, upon any sound principle, be allowed to prevail.[3]

The Parsees have obtained the enactment of an intestate succession law of their own (XXI. of 1865).

[1] Sir R. K. Wilson, "Introduction to Anglo-Mahommedan Law," p. 121. It is also important to observe that the Mahommedan criminal law had not been introduced into the territories under Bombay to anything like the same extent as into Bengal. See on this subject the Judicial Letters from Bombay of July 29, 1818, pars. 186 *seq.*, printed in the Reports to Parliament on East Indian Affairs for the year 1819.

[2] This, of course, is merely the statement of the Bengal Armenians of 1836.

[3] Morley's "Digest," introduction, p. clxxxvii.

In matters for which neither the authority of Hindu or Mahommedan text-books or advisers, nor the regulations and other enactments of the Government supplied sufficient guidance, the judges of the civil courts were usually directed to act in accordance with "justice, equity, and good conscience." An Englishman would naturally interpret these words as meaning such rules and principles of English law as he happened to know and considered applicable to the case; and thus, under the influence of English judges, native law and usage were, without express legislation, largely supplemented, modified, and superseded by English law.

The inquiries and reports which preceded the Charter Act of 1837 directed attention to the unsatisfactory condition of the law in British India at that time, and, in particular, to the frequent difficulty of ascertaining what the law was and where it was to be found. The judges of the Calcutta Supreme Court, after describing generally the state of the law, went on to say: "In this state of circumstances no one can pronounce an opinion or form a judgment, however sound, upon any disputed right of persons respecting which doubt and confusion may not be raised by those who may choose to call it in question; for very few of the public or persons in office at home, not even the law officers, can be expected to have so comprehensive and clear a view of the Indian system as to know readily and familiarly the bearings of each part of it on the rest. There are English Acts of Parliament specially provided for India, and others of which it is doubtful whether they apply to India wholly, or in part, or not at all. There is the English Common Law and Constitution, of which the application is in many respects still more obscure and perplexed; Mahommedan Law and Usage; Hindu Law, Usage, and Scripture; Charters and Letters Patent of the Crown; regulations of the Government, some made declaredly under Acts of Parliament particularly authorizing them, and others which are founded, as some say on the general power of Government entrusted to the company by Parliament, and as others assert on their rights as successors of the old Native Governments; some regulations require registry in the Supreme Court, others do not; some have effect generally throughout India, others are peculiar to one presidency or one town. There are commissions of the Governments, and circular orders from the Nizámat Adawlat, and from the Dewání Adawlat; treaties of the Crown; treaties of the Indian Government; besides inferences drawn at pleasure from the application of the '*droit public*,' and the law of nations of Europe, to a state of circumstances which will justify almost any construction of it, or qualification of its force."

For the purpose of remedying this unsatisfactory state of things, an Indian Law Commission was appointed under the Charter Act of 1833, with Macaulay at its head. The commission sat for many years, and produced several volumes of reports, which in some cases supplied the basis of Indian legislation. But it was not until 1860 that the Indian Penal Code, its most important achievement, was placed on the Indian Statute Book. The first editions of the Codes of Criminal and Civil Procedure were passed in the following year (1861).[1] The law of procedure has been supplemented by the Evidence Act (I. of 1872), and the Limitation Act (XV. of 1877), and by the Specific Relief Act (I. of 1877), which stands on the borderland of substantive and adjective law. These Acts apply to all persons in British India, whether European or native, and wholly displace and supersede native law on the subjects to which they relate.

But when the time came for codifying the substantive civil law, it was found necessary to steer clear of, and make exceptions with respect to, important branches of native law.

The Indian Succession Act, 1865 (X. of 1865), which is based on English law, is declared by s. 2 to constitute, subject to certain exceptions, the law of British India applicable to all cases of intestate or testamentary succession. But the exceptions are so wide as to exclude almost all natives of India. The provisions of the Act are declared (s. 331) not to apply to the property of any Hindu, Mahommedan, or Buddhist. And the Government of India is empowered (s. 332) to exempt by executive order from the operation of the whole or any part of the Act the members of any race, sect, or tribe in British India, to whom it may be considered impossible or inexpedient to apply those provisions. Two classes of persons have availed themselves of this exemption—Native Christians in Coorg, and Jews in Aden. The former class wished to retain their native rules of succession, notwithstanding their conversion to Christianity. The Jews of British India had agreed to place themselves under the Act, but it was not until some twenty years after the Act had become law that the Jews of Aden, who lived in a territory which is technically part of British India, but who still observed the Mosaic law of succession, discovered that they were subject to a new law in the matter of succession. They petitioned to be released from its provisions, and were by executive order remitted to the Pentateuch.

The operation of the Indian Succession Act has, however, been extended by subsequent legislation.

The Oudh Estates Act, 1869 (I. of 1869), expressly enabled the

[1] These Acts are now represented by Acts X. and XIV. of 1862.

taluqdars of Oudh to dispose of their estates by will, and applied certain provisions of the Indian Succession Act to their wills.

The Hindu Wills Act (XXI. of 1870), applied certain of its provisions—

(*a*) To all wills and codicils made by any Hindu, Jaina, Sikh, or Buddhist, on or after September 1, 1870, within the territories subject to the Lieutenant-Governor of Bengal, or the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature of Madras and Bombay; and—

(*b*) To all such wills and codicils made outside those territories, and limits so far as relates to immovable property situated within those territories or limits.

But nothing in the Act is to—

(*a*) Authorize a testator to bequeath property which he could not have alienated, *inter vivos*; or

(*b*) Deprive any persons of any right of maintenance of which but for the Act, he could not deprive them by will; or

(*c*) Affect any law of adoption or intestate succession; or

(*d*) Authorize any Hindu, Jaina, Sikh, or Buddhist to create in property any interest which he could not have created before September 1, 1870.

The Probate and Administration Act, 1881 (V. of 1881), which extends to the whole of British India, applies most of the rules in the Succession Act, 1865, with respect to probate and letters of administration, to the case of every Hindu, Mahommedan, Buddhist, and person exempted under s. 332 of the Indian Succession Act, dying on or after April 1, 1881 (s. 2).

The same section provides that a court is not to receive application for probate or letters of administration until the local government has, with the previous sanction of the Governor-General in Council by notification in the official *Gazette*, authorized it so to do. Such notifications have been since given by the local governments. The Act, however, is merely a permissive measure, and authorizes, but does not require, application for probate or administration. And it must be remembered that Hindus do not, as a rule, make wills.

The Indian Contract Act (IV. of 1872), does not cover the whole field of contract law, but, so far as it extends, is general in its application, and supersedes the native law of contract. However, it contains a saving (s. 2) for any Statute, Act, or regulation not thereby expressly repealed, and for any usage or custom of trade, or incident of contract not inconsistent with its provisions. The saving for Statutes has been

held to include the enactment of George III., under which matters of contract are, within the presidency towns, but not elsewhere, directed to be regulated by the personal law of the party, and thus, paradoxically enough, certain rules of Hindu law have maintained their footing in the last part of British India where they might have been expected to survive. On the other hand it appears to have been held that the Mahommedan law of contract is superseded by the Indian Contract Act in the presidency towns as well as elsewhere.[1] The saving for custom has been held by some judges to include the rule of Hindu law (known as *damdupat*[2]) that arrears of interest, exceeding in amount the principal debt, are not recoverable at the same time.

The Negotiable Instruments Act, 1881, which corresponds to and formed the precedent for our English Bills of Exchange Act, extends to the whole of British India, but is declared (s. 1) not to affect any local usage relating to any instrument in an oriental language. It therefore preserves the customary rules as to the construction and effect of "hundis," or native bills of exchange and promissory notes, except so far as those rules are excluded by the agreement of the parties.[3]

The Transfer of Property Act, 1882, which lays down rules with respect to the sale, gift, exchange, mortgage, and leasing of land, and on other points supplements the Contract Act, does not apply to the Punjab or to Burma (except the town of Rangoon); and, within the parts of India to which it extends, it reserves, or keeps in operation, native rules and customs on certain important subjects. For instance, nothing in the Act is to affect the provisions of any enactment not thereby expressly repealed, *e.g.* the Indian Acts which expressly save local usages in the Punjab and elsewhere. And nothing in the second chapter, which relates to the transfer of property by the act of parties, is to affect any rule of Hindu, Mahommedan, or Buddhist law (s. 2). The provisions as to mortgages recognize and regulate forms of security in accordance with native as well as English usage. Local usages with respect to apportionment of rents and other periodical payments (s. 36), mortgages (s. 98), and leases (ss. 106, 108), are expressly saved. And finally there is a general declaration (s. 117) that none of the provisions of the chapter relating to leases are to apply to leases for agricultural purposes, except so far as they may be applied thereto

[1] *Mia Khan*, 5 B. & A., 1870; Wilson, "Anglo-Mahommedan Law," p. 4.

[2] As to this rule, see the article on "Creditor and Debtor in India," in the *Law Quarterly* for January, 1896, at p. 45.

[3] It is said, however, that the Indian banks refuse to discount hundis unless the parties agree to be bound by the Act.

by the local government, with the sanction of the Government of India. Thus the application of these provisions is confined within very narrow limits. The law relating to the tenure of agricultural land is mostly regulated by special Acts, such as the Bengal Tenancy Act (VIII. of 1885), and the similar Acts for other provinces.

The Indian Trusts Act, 1882 (II. of 1882), which codifies the law of trusts, does not apply to the province of Bengal, or to the presidency of Bombay. And nothing in it is to affect the rules of Mahommedan law as to *wakf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or to apply to public or private religious or charitable endowments (s. 1).

The Indian Easements Act, 1882 (V. of 1882), which is in force in most parts of India outside the lower provinces of Bengal,[1] also embodies principles of English law, but is not to derogate from certain Government and customary rights (s. 1).

The Guardian and Wards Acts, 1890 (VIII. of 1890), which declares the law with respect to the appointment, duties, rights, and liabilities of guardians of minors,[2] provides (s. 6) that in the case of a minor, who is not a European British subject, nothing in the Act is to be construed as taking away or derogating from any power to appoint a guardian which is valid by the law to which the minor is subject. And in the appointment of a guardian the court is, subject to certain directions, to be guided by what, *consistently with the law to which the minor is subject*, appears in the circumstances to be for the welfare of the minor (s. 17).

The law of torts or civil wrongs, as administered by the courts of British India, whether to Europeans or to natives, is practically English law. The draft of a bill to codify it was prepared some years ago, but the measure has never been introduced.

If we survey the whole field of law, as administered by the British Indian courts, and examine the extent to which it consists of English and of native law respectively, we shall find that Warren Hastings' famous rule, though not binding on the Indian legislatures, still indicates the class of subjects with which the Indian legislatures have been chary of interfering, and which they have been disposed to leave to the domain of native law and usage.

[1] Its operation was extended by Act VIII. of 1891.

[2] The age of majority for persons domiciled in British India is by Act IX. of 1875 (as amended by s. 52 of Act VIII. of 1890) fixed at eighteen except where before the attainment of that age a guardian has been appointed for the minor by the court, or his property has been placed under the superintendence of the Court of Wards, in which case the minority lasts until twenty-one.

The criminal law, and the law of civil and criminal procedure, are based wholly on English principles. So also, subject to some few exceptions,[1] are the law of contract and the law of torts, or civil wrongs.

But within the domain of family law, including the greater part of the law of succession and inheritance, natives still retain their personal law, either modified or formulated, to some extent, by Anglo-Indian legislation. Hindus retain their law of marriage, of adoption, of the joint family, of partition, of succession. Mahommedans retain their law of marriage, of testamentary and intestate succession, and of *wakf*, or quasi-religious trusts. The important branch of law relating to the tenure of land, as embodied in the Rent and Revenue Acts and regulations of the different provinces, exhibits a struggle and compromise between English and Indian principles.

Are there any conclusions of general interest to be drawn from this dry narrative? Perhaps one or two.

It will have been seen that our first attempt in India was to govern natives by native law, Englishmen by English law. This is the natural system to apply in a conquered country, or in a vassal state—that is to say, in a state where complete sovereignty has not been assumed by the dominant power. It is the system which involves the least disturbance. It is the system which was applied by the barbarian conquerors of the provinces of the Roman empire, and which gave rise to the system of personal law that plays so large a part in the long history of the decay of that empire. It is, I believe, the system now in force in Tunis, where the French have practically established an exclusive protectorate, and where, as I understand, French law is administered by French courts to Frenchmen and European foreigners, and Mahommedan law by Mahommedan courts to the natives of the country. It is the system which is applied, with important local variations, in the protectorates which we ourselves have established in different parts of the world over uncivilized or semi-civilized countries. I say with important variations, because the extent to which native laws and usages can be recognized and enforced depends materially on the degree of civilization to which the vassal state has attained.

The system broke down in India from various causes.

In the first place there was the difficulty of ascertaining the native law.

Warren Hastings did his best to remove this difficulty by procuring

[1] *E.g.* the Mahommedan rules as to the right of pre-emption, which are expressly recognized by the Punjab Laws Act, 1872 (as amended by Act XII. of 1878) and by the Oudh Laws Act, 1876.

the translation or compilation of standard text-books such as the Hedaya, the Sirajiyah, and the Sharifyah for Mahommedan law, the Code of Manu, the Mitakshara, and the Dayabhaga for Hindu law, and by enlisting the services of native law officers as assessors of the company's courts. His regulations were based on the assumption that the natives of India could be roughly divided into Mahommedans and Gentus, and that there was a body of law applicable to these two classes respectively. But this simple and easy classification, as we now know, by no means corresponds to the facts. There are large classes who are neither Mahommedan or Hindus. There are various schools of Mahommedan law. There are Mahommedans whose rules of inheritance are based, not on the Koran, but on Hindu or other non-Mahommedan usages. Hinduism is a term of the most indefinite import. Different text-books are recognized as authoritative in different parts of India and among different classes of Hindus. Even where they are so recognized, they often represent what the compiler thought the law ought to be rather than what it actually is or ever was. Local, tribal, caste, and family usages play a far larger part than had originally been supposed, and this important fact has been recognized in later Indian legislation.

Then, the native law, even where it could be ascertained, was defective. There were large and important branches of law, such as the law of contract, for which it supplied insufficient guidance. Its defects had to be supplied by English judges and magistrates from their remembrance, often imperfect remembrance, of principles of English law, which were applied under the name of justice, equity, and good conscience.

And lastly, native law often embodied rules repugnant to the traditions and morality of the ruling race. An English magistrate could not enforce, an English Government could not recognize, the unregenerate criminal law of Indian Mahommedanism.

Thus native law was eaten into at every point by English case law, and by regulations of the Indian legislatures.

Hence the chaos described in the passage which I have quoted from the report of the Calcutta judges.

This chaos led up to the period of codification, which was ushered in by Macaulay's Commission of 1833, and which, after the lapse of many years, bore fruit in the Anglo-Indian codes.

In India, as elsewhere, codification has been brought about by the pressure of practical needs. On the continent of Europe the growth of the spirit of nationality, and the consequent strengthening of the central government, and fusion of petty sovereignties or half-sovereignties, has

brought into strong relief the practical inconveniences arising from the co-existence of different systems of law in a single State. Hence the French codes, the Italian codes, and the German codes. If codification has lagged behind in England, it has been largely, perhaps mainly, because England acquired a strong central government, and attained to practical unity of law, centuries before any continental state.

In India it became necessary to draw up for the guidance of untrained judges and magistrates a set of rules which they could easily understand, and which were adapted to the circumstances of the country. There has been a tendency, on the one hand, to overpraise the formal merits of the Indian codes, and, on the other, to underrate their practical utility as instruments of governments. Their workmanship, judged by European standards, is often rough, but they are, on the whole, well adapted to the conditions which they were intended to meet. I have endeavoured to indicate in this paper the extent to which they have supplanted or modified native law and custom.

It has often been suggested that the process of codification should be deliberately extended to native law, and that an attempt should be made, by means of codes, to define and simplify the leading rules of Hindu and Mahommedan law, without altering their substance. Sir Roland Wilson, in particular, has recently pleaded for the codification of Anglo-Mahommedan law, of which he has produced an excellent digest. I am inclined, from my personal experience, to think that he has very much underrated the difficulties of such a task. Those difficulties arise, not merely from the tendency of codification to stereotype rules which, under the silent influence of social and political forces, are in process of change, but from the natural sensitiveness of Hindus and Mahommedans about legislative interference with matters closely touching their religious usages and observances, and from the impossibility in many cases of formulating rules in any shape which will meet with general acceptance. It is easy enough to find an enlightened Hindu or Mahommedan, like Sir Syed Ahmed Khan, who will testify to the general desire of the natives to have their laws codified. The difficulty begins when a particular code is presented in a concrete form. Even in the case of such a small community as the Khojas, who have contrived to combine adhesion to the Mahommedan creed with retention of certain Hindu customs, it has, up to this time, been found impossible to frame a set of rules of inheritance on which the leaders of the sect will agree. And any code not based on general agreement would either cause dangerous discontent or remain a dead letter. The misconceptions which have arisen about the recent Guardians and Wards Act, the

authors of which expressly disavowed any intention of altering native law, illustrate the sensitiveness which prevails about such matters.

And what, after all, is a code? It is a text-book enacted by the legislature. Several of the Anglo-Indian codes extend only to particular provinces of British India. But, as clear and accurate statements of the law, they possess much authority in the provinces to which they have not been formally extended. Indeed, it was Sir Henry Maine's view that the proper mode of codifying for India was to apply a code in the first instance to a particular province, where its enactment would meet with no opposition, and gradually extend its operation after the country had become familiarized with its contents, and accepted it as a satisfactory statement of the law. When this stage had been reached, what had been used as a text-book might be converted into a law. Now, the author of a text-book enjoys many advantages over the legislators who enact a code. He can guard himself by expressions such as "it is doubtful whether" and "there is authority for holding." And he can correct any error or omission without going to the legislature. If a digest such as Sir Roland Wilson's obtains general acceptance with the courts which have to administer Anglo-Mahommedan law, it will supply an excellent foundation for a future code of that law. But the time for framing such a code has not yet arrived.

APPLICATION OF EUROPEAN LAW TO NATIVES OF CEYLON.

[*By L. B. Clarence, Esq., late Judge of the Supreme Court, Ceylon.*]

I WILLINGLY accept the invitation to append to Sir Courtenay Ilbert's paper on "The Application of European Law to Natives of India," a note regarding Ceylon.

Ceylon is but a third the size of the North-West Provinces of India, and holds only three native races, speaking two native languages. About 2,000,000 Sinhalese inhabit the southern two-thirds of the island, and about 500,000 Tamils[1] the northerly parts. Both these races are of Indian origin. About 200,000 "Moormen," a race of mixed Arab and Indian descent, speaking Tamil, and professing the Mahommedan faith, are scattered throughout the island.

Compared with India there was less of ascertainable native law in Ceylon when our rule began. Foreign influences make more inroads on native usage and tradition in an island. Moreover, the seaboard had for nearly three hundred years been in the successive occupation of the Portuguese and the Dutch. Upon the whole the administration in Ceylon has paid less attention than the Government of India to the remains of native law and usage. Ceylon almost from the outset of our rule has been administered under the Colonial Office, sharing the care of that department with a large number of other dependencies, mostly quite unlike herself, in all parts of the world. The first administrators under the Colonial Office entered upon their task with small local experience, and the importation from time to time of officers from other dependencies to fill high posts in the public service introduced an element less known in India, where the higher offices which carry with them the duty of framing or advising on legislation, have more uniformly been men armed with all the experience to be acquired during working lives spent in the country.

Before 1796 the Portuguese and Dutch had successively occupied the maritime districts for about 150 years each. In 1796 we took possession

[1] This is exclusive of another 250,000 immigrant Tamils, employed as coolies in the planting districts, whose homes are in Southern India, and who come and go between there and Ceylon.

of the Dutch Settlements, and in 1815 annexed the rest of the island, over which as yet no European power had ruled.

The Dutch had effaced any traces of law left by the Portuguese, and introduced into the maritime districts the Roman-Dutch law of the Netherlands. About the middle of the eighteenth century, in consequence partly of doubts as to how much of the Roman-Dutch law should be deemed to have accompanied the Dutch to the East, a body of rules, under the name of the "Statutes of Batavia," was drawn up for use in the Dutch eastern settlements in general in India, Batavia, and Ceylon. It is uncertain how far these rules ever carried authority in Ceylon.

For the Tamils of the Jaffna peninsula in the extreme north of the island a compilation of customary law, approximating more or less to old customary law of Indian origin, and styled the Thesawalamei, was made under the Dutch rule. It affected mainly the devolution of property and rights concerning land.

When we arrived in 1796, the Sinhalese of the maritime districts were entirely subject to the Roman-Dutch law, plus the recognition of a few native customs relating principally to the cultivation of land. Thus as to the law in general, including, for instance, inheritance and devolution of property, contracts and wrongs, marriage community and mutual wills, the Roman-Dutch law governed these Sinhalese as the ultimate law of the country.

After our advent the Dutch tribunals and chambers for the Administration of justice were replaced by courts devised by our Government. But the Roman-Dutch law itself, though from time to time trenched upon by legislation, has never been *ipso facto* abrogated under our rule, and consequently is still in force, where legislation is silent, as the ultimate unwritten law governing native and European alike. Strange to say, also, after our annexation of the interior in 1815, an atmosphere of Roman-Dutch law was gradually extended even there, and thus doctrines and principles of this Roman-Dutch law came to be regarded as in the nature of an ultimate common law even in parts where no Dutchman ever set foot. Finally, Ord. 5 of 1852, s. 5, by expressly introducing into the "Kandyan" country the law of the maritime districts, in all cases where Kandyan law or custom having the force of law are silent, let in definitively the remains of Roman-Dutch law as unwritten law for the interior.

In 1805 an imperfect code of Mahommedan law was enacted by proclamation in relation to the Moormen of the province of Colombo. The operation of this was afterwards extended by Ord. 5 of 1852 to Moormen throughout the island.

Shortly after our annexation of the Kandyan country, the home Government asked for an account of the ancient institutions, customs, and traditions of the Kandyans. This led to the compilation, by native experts, of a code of Kandyan customary law under the name of "Niti-nighanduva," which is still recognized as applicable to the Kandyan Sinhalese. The customs thus recognized were once, no doubt, common to all the Sinhalese inhabitants of the island.

For some years after this, the administration in the maritime districts and in the Kandyan country was on a different footing, both in executive and judicial matters. In neither part of the island were Europeans and natives subject to the same tribunals, and in the Kandyan country there was some uncertainty as to the proper procedure for the criminal trial of Europeans. In 1833 a Report by two Commissioners (Colebrooke and Cameron) borrowed from India, led to the whole island being placed on the same footing. Since then no distinction has been recognized by the law, in point of legal procedure, civil or criminal, between Europeans and natives.[1]

If this uniformity as to the criminal procedure applicable to the European and the native suggests a comparison with India, the difference is, so far as concerns its effect on Europeans, less than at first sight it appears to be. For in all the Ceylon courts the proceedings take place in the English language, and native judicial officers are rarer than in India. If a European were committed for trial upon any grave charge cognizable only by the Supreme Court, in a district where the jury would necessarily be composed of natives, strenuous endeavours would probably be made, under certain provisions of the Criminal Procedure Code, to have the case transferred for trial in another district.

Very little Sinhalese usage, as I have said, is recognized as having effect of law in the maritime districts, and the Kandyan compilation already mentioned has no application there. In the Kandyan country, apart from the recognition of that compilation, native tradition has not been by any means uniformly respected by the legislature. In particular the traditions and traces of joint ownership of land were largely ignored or discouraged by legislation and procedure framed on the basis of a free trade in land. Thus a proclamation in 1821 aimed

[1] There is one small exception to this: Ord. 26 of 1871 created, under the name of village tribunals, a jurisdiction affiliated to village councils, and intended to be on the lines of the Sinhalese Gansabhawa and the Indian Panchayet, with a very limited civil and criminal jurisdiction. These are restricted to native matters of very small dimensions. The village tribunals have been from time to time introduced by proclamation, under the above Ordinance, in various districts of the Sinhalese country, but not in Tamil districts. The village folk do not seem to regard them with much favour.

at extinguishing the traces of Kandyan usage, under which sellers of land were supposed to retain rights of pre-emption, and an Ordinance of 1844 was directed against undivided possession of land throughout the island. The practice of selling shares and interests in land in execution of judgments against individuals, for recovery of fines, and even for the cost of maintaining convicted prisoners in gaol,[1] ran counter to the traditions of joint ownership and led to much heart-burning, quarrelling, and litigation. The Kandyan custom of polyandry, under which two or more brothers live with one wife, was attacked by prohibitory legislation, the effect of which is, that the custom still subsists in the form of concubinage, and complications and dissensions arise concerning the devolution of property.

Schemes of Land Settlement akin to the Indian were not undertaken in the early days of our rule, but an Ordinance of 1870 provided for the ascertaining and commuting of the services by which the tenants of *ninde-gamas* held lands of their lords. The difficulty of recovering trifling sums due under these commutations is, with other laws, gradually working the extinction of the ancient Sinhalese *ninde-gama*, and thus unfortunately, contributing to the decay of the native gentry.

A definite Forest Settlement Scheme was set on foot a few years ago, for the protection of forests and the ascertaining of native rights in relation thereto.

Various enactments have from time to time been passed, which, though couched in general terms, are practically of application to natives only.

With regard to the great body of law, both substantive law and procedure, which applies indifferently to the native and the European it is to be noted that such shortcomings as there are press more injuriously on the native than on the European.

All proceedings in the law courts are conducted in the English language, through the medium of interpretation and translation. If a native sues in any court, civil or criminal, he must file a plaint, written in English, or state his complaint orally to a court officer, who will take it down in English. He must also furnish translations of all vernacular documents relied on. This renders the people largely dependent on the services of native or Eurasian intermediaries, and enhances for them the effects of any shortcomings or complications in procedure.

The native propensities for litigation, coupled with the use of English

[1] Under a Criminal Procedure Code modelled in 1883 from the Indian one, land is no longer sold for fines, but may still (though in practice this is no longer enforced) be sold for costs of gaol maintenance.

as the language of the law courts, also enhances for the natives the ill effects of any defects in the substantive law.

One unfortunate incident in the substantive law is the survival (already mentioned) of Roman-Dutch law. The continued existence of remnants and traditions of this law in a decaying and semi-obsolete condition has been the parent of much unwholesome uncertainty. As the Dutch times receded farther into the past the doctrines of the Roman-Dutch law of the last century became less and less applicable to the present conditions of life. Theories and remnants of procedure originally founded on Dutch institutions no longer extant still linger to hamper and confuse the administration of justice. Lawyers are largely educated from English text-books, and few can read the Latin of the Roman-Dutch jurists. Yet, in spite of wholesale introductions by Statute of English law, pure and simple, in various departments, variant remnants of Roman-Dutch doctrine still lurk in all directions.

Some years ago, in a litigation between the members of a Sinhalese family, much expense and delay was occasioned by the question whether, under certain circumstances of a succession under an intestacy, the inheritance should devolve according to the Dutch law of North Holland or South Holland. An Ordinance of 1876, for the regulation of matrimonial rights, now provides for the matter.

In the matter of criminal law the Dutch substantive law became gradually obsolete as English criminal law imperceptibly crept into regard, till, incredible as it may seem, the courts were driven to administer on their own responsibility a species of equitable criminal law. This was finally ended in 1883 by the enactment of a penal code largely modelled on the Indian. It would be a boon to all classes of the community if the vestiges of Roman-Dutch law were now finally swept away.

In 1810, trial by jury was introduced into the maritime districts, but on the criminal side only, for the graver criminal charges which are reserved for trial before the Supreme Court. Since 1833 such charges are tried by jury throughout the island, but before the Supreme Court only.

Among topics on which English law has been *eo nomine* introduced are bills of exchange, shipping and maritime matters, partnerships, banking, principals and agents, carriers by land, fire and life insurance, and evidence. As to the last-mentioned, an evidence code after the model of the Indian would better suit the country.

NOTES ON THE STATE LEGISLATION OF AMERICA IN 1895.

[*By Albert Gray, Esq., of the Inner Temple.*]

UNDER the title of "State Library Bulletin (Legislation), No. 6," the University of the State of New York has published a Sixth Annual Comparative Summary of the Legislation of the States of the Union. The Bulletin covers the legislative work of thirty-seven States and two Territories during the year 1895. In the case of Vermont, South Carolina, and Georgia, which hold their sessions at the end of the year, the session of 1894 is included, and that of 1895 postponed. The Iowa legislation of 1894 (not received in time for the preceding Bulletin) is included along with that of 1895.

The mode of constructing the Bulletin is by slip-entries, arranged according to subject, and numbered consecutively. Enactments by different States to the same effect are included in the same entry. In some cases, where necessary, the same entry appears twice. There are nineteen chief headings, under which the whole mass is classified, and the total number of separate entries, few of which exceed three lines, is 4535. The manner in which the work is done reflects the highest credit on the director, Mr. Melvil Dewey, and also on the new sub-librarian, Mr. E. Dana Durand, who has introduced many improvements in arrangement and classification.

In the following notes no attempt is made to give anything like an adequate presentment of the year's instalment of legislation. Many of the entries relate to amendments of previous legislation; many (principally under the heads of education, corporations, State and local government, and finance) would not be intelligible without lengthy explanation of the American institutions and organizations to which they refer; in a few cases entries merely guide the reader to the laws without condescending to particulars. It must suffice, in the present article, to take note of a few items of last year's legislation, wherein Americans have made new or further experiments in the regulation of

matters which in the British Empire are either within the realm of law or perhaps only within the wider sphere of debate.

In regard to the marital relations, the State legislatures have made many notable experiments, and in 1895 a few more are added. Pennsylvania allows divorce on the ground of "cruel or barbarous treatment *or indignities* by wife," the words in italics being an amendment of previous law. North Carolina permits a decree in case of two years' desertion; Minnesota reduces the term of desertion from three years to one. Idaho allows divorce on ground of permanent insanity. New York allows action of nullity at the suit of party incapable, if that party was unaware of the incapacity or of its incurability. Arkansas repeals a previous law allowing absolute divorce for habitual drunkenness, cruel treatment, or indignities. Connecticut prohibits marriage or intercourse where either man or woman is epileptic, imbecile, or feeble-minded, and the woman is under forty-five. Bastards in New York (as in Scotland) become legitimate on the marriage of their parents.

Several States pass further laws for the suppression of gambling and lotteries; in one, violation of the law being made felony. New York regulates horse-racing, requiring meetings to be licensed, and imposing a 5 per cent. tax on gross receipts. Indiana prescribes a close time for racehorses, prohibiting races between November 15 and April 15. Several States legislate expressly against pool-selling and bookmaking. These practices are felony in New York and Minnesota. In the latter State and in Pennsylvania the law applies to bookmaking on elections as well as races. As will be seen hereafter in connexion with liquor legislation, special protection is given to youth. Washington prohibits minors under eighteen from entering gambling houses. New Hampshire requires that youths under sixteen shall not be admitted to billiard saloons where pool is played. And in connexion with a recent cause of dispute between the American and German Governments as to a casino in Germany, it is to be noted that Connecticut does not allow minors under sixteen, unattended, to enter dance houses, concert saloons, roller rinks, or vaudeville theatres having variety shows.

In no department of legislation is America so prolific in experiments as that of liquor law. Iowa, a prohibitionist State, but one in which that system has been severely assailed, has a proposal to be submitted to the next legislature adding a prohibition clause to its constitution. The anti-prohibitionists, however, appear to be in the ascendency for the time being, a law having been passed barring prosecutions under the prohibitory law when a certain proportion of the voters petition in writing, on payment of $600 annual tax. South Dakota, one of the

States which had prohibition inscribed on its constitution when Mr. Fanshawe wrote, has now pending a proposal for its deletion.

States in which local option wholly or partly prevails, such as Minnesota, Michigan, Connecticut, and Florida, have passed measures to perfect that system, principally in regard to the details of voting. South Carolina, in 1892, made a new departure with her "State-dispensary" system, under which liquor is sold under control of a State board, by State dispensers, on State account. The dispensers are not to charge more than 50 per cent. over cost price, and an amendment of 1894 now requires that the price is to be marked on every bottle or package. Sheriffs and other police-officers are required to take a special oath to enforce the liquor law, and, as a further check, provision is made for the appointment of police boards for supervision in cities. In Michigan, a local option State, the rate for licences for sale of malt and brewed liquors is reduced from $500 to $300.

In regard to licensed premises some interesting regulations are made. Connecticut requires that licences shall not be granted for sale in any "purely manufacturing or residence portion of the town," or near charitable institutions, or on the border of a no-licence town. In California, sale is not permitted within a mile and a half of soldiers' homes; in Wisconsin, within two miles and a half. Washington prohibits sale within the grounds of the State university; Minnesota, within fifteen hundred feet of a school-house; Wisconsin, within one mile of an insane hospital.

No female is to be employed in any saloon, theatre, or other place of amusement where liquors are sold in Washington. It is unlawful in Minnesota, Wisconsin, or Indiana to sell liquor to any minor, whether for his own use or for use of his parents or others; in Wyoming, to *give or* sell to persons under sixteen. In Connecticut and New Hampshire minors under sixteen are not allowed in saloons unless accompanied by a parent; in the latter State the age being reduced from eighteen.

The enemies of cigarettes will learn with interest that their sale in North Dakota is altogether prohibited; that they are forbidden to be sold to youths under twenty-one in Nebraska, and under eighteen in Washington. Other States go further; it is penal to sell or give cigars or tobacco to minors under eighteen in New Mexico, New Hampshire, and Montana; under seventeen in North Dakota; under sixteen in Wyoming and Iowa; and to minors attending school in Minnesota. The States here mentioned must not be regarded as leaders in the crusade against smoking by youths. The Bulletins for 1890–1894 show that no less than twenty-two States had already legislated against the

mischief, some extending the prohibition to all tobacco, but most confining their attentions to cigarettes. The age of protection varies between sixteen and twenty-one.

In regard to Sunday observance, Vermont and Massachusetts prohibit "engaging in business or sports, resorting to dances, etc., between Saturday midnight and Sunday midnight," but the latter State excepts certain kinds of businesses within certain hours. Washington allows fishing for salmon on Sunday. Barbers are not allowed to open their shops on Sunday in New York, Missouri, Illinois, or Montana; while in California it is a misdemeanour for these artists to work after noon on Sunday or any holiday.

We have had many complaints of late years in this country with respect to the effects of pernicious literature on the minds of the young. Let it therefore be noted that Indiana prohibits the sale of books, etc., dealing with the commission of crime, ranking them with obscene literature; while Alabama specifically prohibits the publishing of the lives of "popularly known outlaws."

The Education Laws are amended in all directions, but most of the provisions relate to American systems, and to matters of finance which are of more local than general interest. We may note, however, that in Pennsylvania there is compulsory attendance for children between eight and thirteen, and for sixteen weeks in the year. In Michigan the limits of age are eight and fourteen, and in cities seven and sixteen, and the school year four months; in Vermont the limits of age are eight to fifteen, and the school year twenty-six weeks. The school year is made thirty-six weeks for all districts in Connecticut; it is to be twenty-eight weeks at least in towns in Vermont, and five months in West Virginia.

Florida enacts that white and coloured people may not be taught together in any school, public or private.

The patriotic side of education has only recently gained recognition in this country, thanks to Mr. Arnold Forster and others. It is much cultivated in America. Six States passed laws in 1895 requiring school authorities to display the United States flag during school hours and at other times. Illinois requires private schools to do the like. North Dakota makes civil government one of the compulsory branches of education; in New Hampshire and Vermont the last session before Memorial Day must be devoted to patriotic exercises.

Washington requires ten minutes each week to be devoted to teaching kindness to animals. Several other States require instruction to be given in elementary physiology and hygiene, with special reference to the effects of alcohol. Education of this kind, as Mr. Fanshawe

shows, is one of the favourite weapons of the temperance reformers and prohibitionists.

Not many laws were passed in 1895 affecting civil rights, but we may note that Oregon, which has hitherto excluded negroes, has a pending proposal to permit them to reside in the State. The everlasting white and black question also appears in new laws of New York and Wisconsin, which enact that all persons shall have equal rights and privileges in hotels, restaurants, barber shops, theatres, public conveyances, and elsewhere.

Turning to the head of Elections, we find that Colorado has adopted women's suffrage. In Idaho, California, Nevada, and Oregon the question awaits subsequent voting. In Kansas a constitutional amendment in favour of the extension has been rejected. Some States approve the use of particular machines for voting, the Myers, the Abbott, and the McTammany being those specified in the various laws.

Some new amendments of the labour and factory laws may be noted. A previous law of Minnesota against any person being called upon to labour more than ten hours a day, is retricted to women and persons under eighteen. A law of Alabama restricting the hours of women's and children's labour to eight hours is repealed. In Minnesota a child under fourteen must not be employed in any factory, workshop, or mine; or anywhere between 6 p.m. and 7 a.m. The age at which labour is permitted is reduced from fourteen to thirteen in Connecticut.

Laws of Minnesota and Wisconsin provide for State and local boards for settling labour disputes. Where one party only applies there is a hearing and a publication of the decision. Where both parties apply, the decision is binding. Arbitration boards are also constituted in Connecticut, New Jersey, and Texas.

Under the head of Property Rights, some States make further exemptions from execution. Thus, in South Dakota and Washington proceeds of life insurance are exempt; in Tennessee, family portraits; in Idaho, food for the family for six months; in Iowa poultry of the value of $50; and in Minnesota "one bicycle"!

Some States continue to fight against usury. The legal rate of interest is fixed at 6 per cent. in North Carolina; at 7 per cent. in Washington, though parties may agree on any rate not exceeding 12. Wyoming raises the legal rate from 8 per cent. to 12 per cent.

In the province of Administration of Justice, a constitutional amendment in Nebraska proposes to extend the term of office for judges of the Supreme Court from five years to six. Delaware reduces the salary of its chief justice from $3500 to $3000. In Pennsylvania

physicians are forbidden to disclose in civil cases communications made to them by their patients. In regard to juries, ten jurors may return a verdict in civil cases in Washington; three-fourths of the jurors in Wyoming. A constitutional amendment allowing verdicts by five-sixths of the jury in civil cases is pending in Nebraska.

The *actio personalis* rule receives a further rude shock in Texas, which enacts that the right of action for injury, whether to health, reputation, or person, is to survive the death of the injured party or the defendant.

In libel cases Illinois, Indiana, and Michigan provide that where there is a retractation before action, only the actual damages sustained are to be recoverable. Michigan further enacts that in defamation actions damages to feelings must be separately specified in the verdict, and that punitive damages are not to be granted unless a retractation was requested.

In the department of Criminal Procedure, the "last word" is given to the counsel for the People in the case of all offences punishable with death. In Michigan power is given to exclude all persons except officers, etc., at the preliminary examination of obscene charges. A provision made by Missouri that the defendant and prosecuting attorney may choose a special judge for the trial of the former, gives further proof of the freedom of American citizenship. Louisiana proposes, and Virginia has accepted, constitutional amendments permitting trial by jury of less than twelve men in cases which in England would be described as "not punishable with penal servitude."

A novel enactment by Florida provides that the charge to the jury shall be in writing when either party so requests. A requirement that the charge should be taken down in shorthand might be justifiable having regard to the law of appeal (if any); but this law, assuming it to be correctly noted, seems a bad precedent.

Under the head of Crimes and Punishments, we find that in regard to rape six States fix the age of consent at eighteen; three put it at sixteen; one at fourteen: while Texas reduces it from fifteen to ten.

We turn with interest to the subject of Convict Labour, and find that Pennsylvania has appointed a commission to inquire how best to utilize prison labour so as not to interfere with private industries. Minnesota requires that not more than 10 per cent. are to be employed in any one industry. Connecticut prohibits the employment of prisoners in the manufacture of drugs, food, cigars, pipes, or chewing-gum. In Indiana licensed persons only are authorized to sell prison-made goods, and must label them as "Convict-made." It appears to be the law in

Washington that prison-made goods cannot be sold for resale, but must be sold to the actual consumer.

Two States make a distinct advance in the experimental treatment of first offenders. New Jersey institutes a State reformatory for first offenders between the ages of sixteen and thirty. Kansas starts a similar institution, fixing however the higher limit of age at twenty-five. These experiments are of interest to Great Britain, in connexion with the report of the recent Departmental Committee on Prisons (chairman, Mr. H. Gladstone, M.P.), which reported in favour of the experiment of establishing a penal reformatory, half-way between the existing reformatory and the prison, to which offenders under the age of twenty-three should be committed for a period not exceeding three years.

The suggestion has recently been made (in this country) that the United States should choose an emblematic flower. But has the United Kingdom such a flower? In America, as here, this is a matter for the individual partners of the Union; and States not hitherto supplied are taking the proper steps. In 1895 Delaware by statute chose the peach-blossom; Nebraska, the goldenrod; Vermont, the red-clover; Montana, the bitter-root. A "State sobriquet" is also found desirable in Nebraska, which assumes the title of "Tree-planters' State."

METHODS OF LEGAL REMUNERATION IN CONTENTIOUS MATTERS.

By John Macdonell, Esq., Master of the Supreme Court.

I.—*NATURE OF THE INQUIRY.*

A SUB-COMMITTEE of the Society of Comparative Legislation, appointed to deal with questions of procedure, instructed me to report on the subject of legal remuneration in contentious matters in foreign countries. I prepared a list of queries on this subject intended to gather together information not before collected. They were submitted to Mr. Hunter, who was then the President of the Incorporated Law Society, and who very greatly improved them. Dr. Schuster, barrister-at-law, translated the queries into German, adding to the translation valuable notes and explanations. The queries were also translated into French, and were circulated in most European countries. Mr. Newton Crane, barrister-at-law, who has practised in the United States of America, took great pains to procure answers from that country; and Mr. Craies, barrister-at-law, and secretary of the sub-committee, examined the legislation of several of our colonies and contributed much information.

It will be noted that the short explanation appended to the questions does not refer to all systems of legal remuneration in this country. There is no reference, for example, to the County Court scales of costs, which are defined "as costs to be paid to solicitors in actions and matters, as well between party and party as between solicitor and client," etc.; to the somewhat similar provision as to costs in the Mayor's Court; or to the bankruptcy scale, which makes costs for instructions for petition, etc., vary with the amount of the assets.

Answers, carefully prepared and showing great desire to further the objects of the Society, were received from many foreign lawyers of eminence;[1] and it is only right to preface this report with a recognition of the public spirit and zeal shown by judges, professors, and practising lawyers in answering, sometimes at great length, a long list of queries. I desire to thank, in particular, the following gentlemen :—

[1] Several of the answers from the colonies were obtained by Mr. John Hunter. Others were obtained by Mr. Budd, President of the Incorporated Law Society in 1895–96.

Mr. T. Barclay, Paris ;

Dr. Bik, Advocate and Procureur, Rotterdam ;

Messrs. Blake, Lash, and Cassels, Barristers and Solicitors, Toronto ;

Signor Bodio, General Director of the Statistics of the Kingdom of Italy, Rome ;

Messrs. Borden, Ritchie, Parker, and Chisholm, Barristers and Solicitors, Halifax, Nova Scotia ;

Mr. L. D. Brandeis, Harvard ;

Mr. Julien T. Daviez, Counsellor and Attorney, New York ;

Messrs. Doris, Marshall, Macneill, and Abbott, Barristers and Solicitors, Vancouver, British Columbia ;

Messrs. Dupee, Judah, Willard, and Wolf, Attorneys and Counsellors, Chicago ;

Dr. Alfred Von Ernst, Hof-und-Gerichts-Advokat, Vienna ;

Señor Fabrega, Barcelona ;

Mr. Fiero, Albany, New York ;

Messrs. Hall, Cross, Brown, and Sharp, Barristers and Solicitors, Quebec ;

Dr. Michael Herezegh, Professor of Law, Buda Pest ;

Senator Hertz, Hamburg ;

Mr. E. G. Kaye, Barrister and Solicitor, St. John, New Brunswick ;

Dr. Gustav König, Advocate, Berne ;

Herr Kordemann, Regierungs-rath, Metz ;

M. Henry Levy, Avocat à la Cour d'Appel, Brussels ;

Dr. Loder, Advocate and Procureur, Rotterdam ;

Sheriff Mackay ;

Mr. Pattison, St. Louis, Missouri ;

Messrs. Rothschild and Ach, San Francisco, California ;

M. Rudolphe Rousseau, Avocat à la Cour d'Appel, Paris ;

Mr. Osgood Smith, Counsellor and Attorney, New York ;

Mr. Monfeld Steven, Boston, Massachusetts ;

Dr. Thomsen, Judge of the Court of Appeal, Copenhagen ;

Mr. C. H. Van Zyl, Attorney, Cape Town ;

Sir Raymond West, K.C.I.E.

The following is a copy of the queries :—

COSTS OF LITIGATION.

THE SOCIETY OF COMPARATIVE LEGISLATION is desirous of ascertaining how and on what principle the costs of litigation are regulated, and by whom they are paid.

In England the costs of litigation in the superior Courts consist of—

(*a*) Court fees paid by the suitors to the Court. They are fixed either by statute or rules of Court. They are payable at different stages of the proceedings. They are not of the nature of *ad valorem* charges. They are recoverable from the successful suitor from the unsuccessful.

(*b*) Fees paid to counsel (barristers) in cases in which counsel are employed. Their amount varies with the importance and complexity of the matter in dispute, and the time occupied by the case, and the status and reputation of the counsel. The fees are payable in advance to the counsel, and are treated as of the nature of *honoraria*. The entire amount of such fees is not necessarily recoverable by a successful suitor from the unsuccessful.

(*c*) Fees paid to witnesses for their attendance at the trial. Witnesses can and do make contracts as to the amounts to be paid to them with the parties seeking their assistance or evidence. Against the unsuccessful suitor the whole of such amounts is not necessarily allowed.

(*d*) Fees paid to the solicitor. They are, for the most part, fixed by rules of Court, and depend mainly on the number of steps taken in the action, the length and number of the papers, and the number of witnesses. There is a higher and lower scale of fees according, speaking generally, to the amount in dispute, the nature, importance, difficulty, or urgency of the case.

The client who employs a solicitor in the conduct of litigation is responsible to him for all costs properly incurred, including the Court fees and the fees to counsel and witnesses, which are generally paid in the first instance by the solicitor.

The solicitor is bound to deliver to his client a bill of costs or statement showing in detail every payment made, and a separate charge for every step taken, attendance, or letter.

A successful litigant, as a rule, is entitled to costs from his unsuccessful opponent. These costs are, in the case of dispute, fixed by an officer of the Court, and the amount allowed is nearly always less than the amount which the successful litigant has to pay to his counsel, witnesses, or solicitor.

The following questions are framed with a view to ascertain how far the practice of other countries differs in these matters from the practice in England. They have been prepared with the knowledge that in some countries the distinction existing in England between barristers and solicitors is unknown. The value of the answers will be much increased if existing divisions in the legal profession are stated :—

I. (1) Is legal remuneration in contentious matters regulated by statute, rules of Court, custom, or special contract? If by statute or rules of Court, are special contracts varying the same valid, and are they common?

(2) Does the remuneration vary with the value of the subject in dispute, or according to the stage at which the proceedings end? If the former, is there any special provision for cases in which, though the matter at issue is nominally of small value, the questions involved are complex and difficult, and important as governing a number of other cases or as affecting personal character?

(3) Is the successful suitor allowed any costs against the unsuccessful suitor? How and by whom is the amount of such costs fixed in case of disagreement? Is the amount allowed in the nature of a complete indemnity for all costs and expenses incurred by the successful litigant?

(4) Is a lawyer (barrister or solicitor) entitled to be paid by his client any excess over and above the sum allowed as against the unsuccessful suitor?

(5) Is there a fixed scale of charges for witnesses for their attendance at the trial?

(6) Is there any distinction between the remuneration in different Courts, according as they are appellate, or of first instance, superior or inferior, criminal or civil?

(7) Is a lawyer (solicitor, *Rechtsanwalt*, etc.) required to deliver to his client a detailed bill of costs or statement with items? If there be no law on the subject, is it customary to deliver such a bill? If not, is any statement delivered of the manner in which the amount of charges is made up?

(8) Is it customary to stipulate that remuneration shall be dependent upon the results of litigation, so that, if nothing be recovered in an action, no remuneration is due? Is such a system of payment legal, and if so is it common among lawyers of good standing?

(9) Is it customary to insist upon payment on account at the outset of litigation, or payment from time to time during its progress?

(10) Are there any rules as to a defendant obtaining security of costs from a plaintiff?

(11) (*a*) Action for personal negligence; claim for £1000 damages; defence, denial of negligence; trial lasting one day; six witnesses for plaintiff and the same number for defendant; two counsel employed on each side; verdict for £500.

(*b*) Action for libel, involving grave charges affecting the character of the plaintiff; defence, justification of the truth of the libel; eight witnesses called for plaintiff and ten for defendant; two counsel for plaintiff and two for defendant; trial lasting two days; verdict for £50.

(*c*) Action for breach of contract to deliver goods; defence, that there was was no contract; question for Court dependent solely upon whether or not certain letters contained a contract; one counsel on each side; no witnesses called; judgment for the defendant.

What in the above cases would approximately be the costs of plaintiff and of defendant?

II. Court fees or legal taxes in contentious matters:—

(1) Are there any Court fees charged in contentious matters?

(2) Does the Court, or what other authority, fix the amount of such fees?

(3) Are they fixed according to the value of the subject-matter in dispute? or how otherwise?

(4) At what stage of the proceedings are they paid? Is payment in advance always insisted upon?

(5) Are the fees different in superior and inferior Courts?

(6) Under what conditions (if any) is the payment of such fees dispensed with?

(7) Are such fees recoverable by the successful party from the unsuccessful?

(8) In what manner (if any) does the Court or State obtain security for the payment of such fees?

NOTE.—A reference to any statutes governing the above matters, or to any official scale of fees, will be acceptable.

2.—*SUMMARY OF SOME RESULTS OF THE INQUIRY.*

A few of the chief conclusions to be drawn from the answers to the queries may be thus stated:—

First, as to the remuneration between solicitors and their clients (including under the former lawyers who combine the functions of solicitors and advocates). In the countries from which returns have been obtained, three systems prevail—

(*a*) Systems which recognize no scale of costs, and which leave legal remuneration to be regulated by contracts, express or implied; the parties having, in the event of a dispute, the same remedy as if there were differences as to the proper remuneration of a builder or an accountant. This system, as explained in the answers of Mr. Osgood Smith and Mr. Daviez, exists in many States of America. It exists also in Denmark. It was also to be found in Germany before the legislation hereinafter described.

(*b*) Systems which fix a scale of charges for each service, leaving it to the Court or its officers, in the event of a dispute, to determine the amount. Such a system exists in England and in most of our colonies. A somewhat similar system exists in Scotland, France, Holland, and Italy. But nowhere, except in England and in colonies which have adopted procedure similar to ours, is an attempt made to separate the items of services with the minuteness to be found in an English bill of costs.

(*c*) Systems which fix the remuneration according to the value of the subject-matter in dispute, the stage at which the proceedings terminate, or according as the action is contested.

This system is contained in the *Gebührenordnung für Rechtsanwälte* of July 7, 1879. A somewhat similar system is found in India (see answers of Sir Raymond West).

In other countries, also, the value of the subject-matter in dispute is taken into account in fixing the *honoraria* of advocates (see Mr. T. Barclay's answers as to France, and Signor Bodio's answers as to Italy).

(*d*) Systems which give no right to any remuneration in excess of what is allowed as against an opponent, in the absence of an agreement. This seems pretty general wherever the English system does not exist. In some countries precautions are taken to protect the client against overcharges. For example, by the German law (*Gebührenordnung für Rechtsanwälte*), as pointed out below, such a contract must be in writing, and signed by the client. In Bombay, as in this country, the Courts may decline to enforce contracts for remuneration between solicitors and clients if such contracts are unreasonable.

The above divisions relate to remuneration as between solicitor and client, etc. As between the parties to actions, the following systems prevail:—

(*a*) In some countries the successful party is, as a rule, entitled to no costs. The rule in Roman law on this subject fluctuated from time to time (see the authorities collected in Zimmern, *Geschichte des Römischen Privatrechts*, 3. s. 179). At one period the rule was that each party bore his own expenses.

"The early law contained no provision for costs. It is true that in the *sacramentum* the loser forfeited his stake, but not to the winner; the lost stake represents the payment of the fees of Court" (Hunter's "Roman Law," 2nd ed. 1019).

At a later period each party bore his own expenses if he had pleaded *bonâ fide;* the unsuccessful party was made liable for the costs (*viatica et sumptus litis*), if the proceedings were brought *temere* (Digest, 5. 1. 79) —a provision retained in the Spanish law (see answers of Señor Fabrega) and also appearing in the Danish law (see answers of Dr. Thomsen). Here, as is well known, neither the plaintiff nor the defendant was entitled at Common Law to costs. The Statute of Gloucester first gave the plaintiff a right to costs *eo nomine.* Before that statute, however, a plaintiff was, in some cases, indirectly indemnified for costs. "These were cases in which he recovered damages which it lay with the jury to assess; for, in doing so, they took into consideration the expense which plaintiff had incurred in prosecuting his suit, and included it in the amount of damages" (Gray on Costs, pp. 1, 2). The system in use in England before the Statute of Gloucester appears still to exist in substance though not in form in the United States (see Mr. Newton Crane's explanation, and the answers of Mr. Daviez and Mr. Osgood Smith).

(*b*) Systems which fix, as between party and party, remuneration according to the value of the subject-matter in dispute. These systems have been referred to above, and the best example of them is described under the heading of "Germany."

(*c*) Systems which give for each step or service a fixed fee.

In almost none of the countries from which answers have been received are the costs allowed by the Courts a complete indemnity. Almost everywhere, apparently, a client must pay considerable sums in excess of what is allowed against his opponent. Even in countries in which costs as between party and party are recognized, they do not always include charges admitted to be absolutely essential to the conduct of most cases. Thus in Belgium, for example, "the sum allowed is not a complete indemnity to the successful party, who must bear the expenses of the *honoraria* of his avocat" (answers by M. Levy).

As to France Mr. Barclay observes, "Only the Court fees paid out of pocket, and, in the case of *avoués*, certain of the before-mentioned scale fees, are recoverable against an unsuccessful party, but nothing in the way of profit, charges, or *honoraires.*" "Each party has to bear," says M. Rousseau, "with no claim for recovery from the other side, the fees of his *avocat* (except a trifling indemnity allowed the successful party) and the special *honoraria* paid to his *avoué.*"

"Theoretically," says the report from Toronto, the amount allowed

by the taxing master "is a complete indemnity. Practically it is not. For example, the costs of procuring evidence cannot be taxed against the other side."

Paradoxical though it may seem, if there be any exception to this rule, it is probably to be found in countries in which virtually no costs are given to a successful litigant. In some of the States of America the jury may be directed to include, and often do include, in the damages a sum which is a sufficient indemnity.

In Belgium, too, the Court may include in the damages a sum approximately equal to that which the successful litigant has been compelled to pay.

In reading the answers, it must be remembered that in some countries—for example, Germany and Austria—there is no distinction between barrister and solicitor; that in some—Holland, for example—the same person often acts as both; and that in France, where the legal profession is divided into *avocats* and *avoués*,[1] the distinction is not exactly the same as between solicitor and barrister. In most of our colonies the distinction, familiar to us, exists neither in theory nor fact. The same name, too, may be applied in two countries to designate professions really somewhat different. Thus, while the Belgium procedure is substantially the same as the French, and the distinction between *avocat* and *avoué* exists in both countries, the duties of the two classes are not the same. "The Belgian *avocat* is in reality *dominus litis*." "In France the client generally goes to an *avoué*, who chooses an *avocat;* while in Belgium, on the contrary, the client goes in the first instance to an *avocat*, and the *avocat* selects the *avoué*." [2]

The answers can be appreciated only if it is borne in mind that the systems of procedure in several of the countries referred to differ from that in use here. In the United States and in most of the Colonies from which answers have been received, the procedure is substantially the same as it is here, or as it was under the Common Law Procedure Acts. In most continental countries exist systems of procedure which, notwithstanding recent changes in the direction of *Mündlichkeit* and *Œffentlichkeit*, retain traces of procedure based on Roman and Canon law, which prevailed in the Middle Ages; systems which dispense almost entirely with oral evidence, and under which the judge intervenes at every stage, and the witnesses, if any, are the witnesses rather of the Court than of the parties. In some continental countries a trial in

[1] In the Tribunals of Commerce the *agrées* have a virtual monopoly (see Mr. Barclay's answer).

[2] See article "Anwaltschaft," in Conrad's *Handwörterbuch der Staatswissenschaften.*

our sense of the term is almost unknown.[1] The parties do not, for the first time when they come into Court, reveal how they intend to establish their case. "In Germany, for example," says Dr. Schuster, "the first step in a civil action is to bring the persons before the Court. The Court then directs what evidence is to be taken and how. Most of the witnesses are not heard by the Court trying the action, but by deputed judges. When the evidence has been taken, another hearing takes place; and then it may be decided to take other evidence, and so on."

Of late years the tendency in most continental countries has been to substitute, for written, oral proceedings in public. But this change is not yet entirely carried out. To take Denmark, for example: in all Courts except the Supreme Court and the Maritime and Commercial Court of Copenhagen, "cases are not *argued*, but *read*. Not only the pleading, in the proper sense of the word, is done in writing, but the arguments too are in writing."

"The evidence before the tribunals of first instance," says Mr. Barclay, with reference to France, "like that before other courts of appeal and cassation, is principally documentary." In Germany the practice as to witnesses is different from ours. Oral evidence is often dispensed with; an order for such proof is required (s. 323 of Code of Procedure), and the party who calls the witnesses is required to give beforehand their names, and to state what they propose to prove (s. 338). The following are some of the regulations as to oral evidence in the Code of Procedure, already referred to, of Geneva—regulations somewhat analogous to some provisions in our law as to Treason, but unknown in our civil procedure :—

Article 191. "L'ordonnance qui admet l'enquête par témoins énoncera les faits à prouver, lesquels devront être précis et concluants."

Article 192. "La liste désignant les noms, professions et demeures des témoins que chaque partie voudra faire entendre, sera remise au greffe trois jours au moins avant le jour de l'audience fixée pour l'enquête," etc.

A further difference arises from the importance given, in most of the systems described below, to the judicial oath as a mode of proof.[2] According to a rule similar to that which obtains here with respect to an affidavit of documents, etc., the oath of A is, broadly speaking, binding on B, who has asked A to take it. Article 169 of the *Loi de Procedure Civile* of Geneva of 1891 states, "Lorsque le serment deféré ou referé a été fait, l'adversaire n'est point recevable à en prouver la fausseté par la voie civile."

[1] See E. Schuster, *Die Bürgerliche Rechtspflege in England.*

[2] See, on this subject, Bethmann-Hollwegg, *Der Germanisch-Romanische Civilprocess*, I. s. 18.

Another difference between the practice in the courts of several of the countries and that in use in the High Court is, that services performed here by solicitors' clerks, *e.g.* service of writs and notices, are part of the duty of the officers of the Court.

According to the *Loi de Procedure Civile* of Geneva of 1891, which is in this respect like most modern Continental codes, services are effected "par acte d'huissier ou par la voie postale, au choix des parties" (Art. 28).

A clear distinction exists in several systems between witnesses and *Sachverständige*, or experts. The latter are in Germany nominated and called by the Court (s. 369 of the Code of Procedure).

So under the new Austrian Code of Procedure the experts are named, and their remuneration is fixed, by the Court (ss. 351, 352).

Such is also the case in Denmark. Indeed, one of the great distinctions between our procedure and that of most other countries is that in the latter the expert is the hand and voice of the Court, not of the parties. He delivers his opinion under a sense of judicial responsibility, and not under the stimulus of a high fee; ruinous competition between the parties in procuring expert evidence is unknown.

Another great distinction is the extent to which suitors are allowed to sue *in formâ pauperis*. It appears from the official report for 1893 that in France in that year there were 71,640 applications for *assistance judiciaire*, and that in no fewer than 30,112 cases the petitions were granted.

In more than one country it is customary, and apparently legal, for the representative body of the Bar to settle disputes between *avocats* and their clients as to the amount of fees (see the answers of Mr. Rudolphe Rousseau as to France, and Mr. Lévy as to Belgium).

As to security for costs, the rules in most countries resemble those in this country. Such security is exacted in country A, in the case of a foreign plaintiff, unless—and here there is a difference from our law—country B to which he belongs allows a subject of A to sue without security (see answers, as to Italy and Austria). Further, in some countries, *e.g.* Scotland, security is exacted in the case of a bankrupt plaintiff.

One peculiarity of the German law as to costs may be here mentioned —the *Rechtsanwalt* is entitled to a considerable fee (*Vergleichsgebühr*) for any settlement of an action effected by his instrumentality. It is worthy of consideration whether some such provision should not be adopted in this country.

A most remarkable peculiarity of the German law is explained by Dr. Schuster at pp. 292–3. Each party has, as with us, to pay, in the first

instance, the fees and expenses of his lawyer and also of process-servers. A deposit for Court fees is paid at each stage of the action. The fees and expenses of witnesses and experts "are, in the first instance, paid out of public funds; and the party ordered by the judgment to pay the costs has to refund them. The result is that a successful litigant has to pay *no* Court fees, *no* witnesses, and *no* experts, beyond the deposited amounts, even if his opponent be insolvent."

In some countries more than one counsel-solicitor in a case is not allowed. This is true of Austria, subject to the exception that the costs of two employed may be charged if they do not exceed the costs of one. As to the procedure in Denmark on this point, Dr. Thomsen says, "The employment of more than one counsel in the management of a cause before the same Court (whether as counsel, or by way of distribution of *rôles*, in the nature of that existing between the *rôles* of solicitor and counsel) is a thing unknown."

On the whole, one is struck by the similarity of the systems of costs described in the reports. The same problems have been considered by foreign courts as by ours; independently, much the same solutions have been adopted; and the same devices have been resorted to to protect clients. The rules as to taxation of costs laid down in French, Italian, Dutch, and Spanish manuals of procedure appear to be substantially the same as those recognized in England. In some form or other, the distinction between party and party and solicitor and client costs is recognized in all countries in which costs are allowed to a successful suitor. In most of our colonies the systems of remuneration are much the same as here. It has been left to Germany to make an experiment of a wholly novel kind.

To some extent the likeness may be traced to the fact that certain rules and practices have come down from the Roman law. One of these rules was that the remuneration of the advocate was in law a *honorarium*, for the payment of which he had not the ordinary legal remedies. As is well known, the fees of barristers of England are in this respect in the same position as the *honorarium* of the *advocatus*, without the exception which it is probable Roman law admitted.[1] The

[1] In the well-known account given by Erle, C.J., in *Kennedy* v. *Broun*, of the Roman law as to the fees of advocates (13 C. B. N. S. 677, 733), is the following passage:—

"Throughout the whole growth of the Civil Law, from the foundation of Rome to the Digest of Justinian, not only was the advocate always under incapacity to make any contract for his remuneration, but also throughout a part of that time he was under prohibition from receiving any gain for his services. Whether the name be *donum* or *merces* or *honorarium*, is immaterial; he never could contract for *merces*, though during part of the time he could lawfully accept a *donum*. In the beginning, all agree that the patron received no money for advocacy. Afterwards

same principle is recognized in Scotland and many of our colonies. Elsewhere this rule has been modified. Even where the term *honorarium* is retained to describe an advocate's remuneration, it does not follow that he cannot enforce payment; for example, in Germany, where the distinction between counsel and solicitor does not exist, the *Rechtsanwalt* can sue for his *honoraria*. To Roman law can be traced the rule, still recognized, that a solicitor cannot discharge himself in the middle of a case. In the Code, 3. 1. 13, "an affidavit of increase" is described, and the assessment of the amount which the successful party ought to receive was designated *taxatio*.

In Roman law the agreement *de quota litis* was illegal. In some countries this rule has been retained; *e.g.* in Belgium. In others the rule is relaxed, but such contracts are viewed with disfavour, which is the case in Holland. In other countries they appear to be common; *e.g.* in the United States.

Payments contingent on a result of litigation appear to be almost universally legal; and if the phrase, "winning fee," in use in India, or the equivalent of such phrase, be not common, the practice of stipulating for such a fee is widespread.

It is difficult to compare the costs of litigation in England with those under systems of procedure very different from ours. As to France, Mr. Barclay gives it as his opinion that "for small cases,

he took gifts to an excess, and was restrained in A.U.C. 550, by the *Lex Cincia de Donis et Muneribus, ne quis ea ob causam orandam caperet*. If gifts were prohibited, *à fortiori* contracts for payments would not be allowed. . . . Mr. Kennedy referred to the Digest, lib. 50, tit. 13, ss. 10 and 12, to prove that an advocate could sue for his fee under the extraordinary cognizance of the Præses. But we do not find that these articles prove his contention. S. 10 seems to relate to a suit by a client against an advocate to make him refund so much of a fee already paid as exceeded the legitimate amount, and gives the principle for estimating what that amount should be. "In honorariis advocatorum ita versari debet judex, ut pro modo litis, proque advocati facundiâ, et fori consuetudine, et judicii in quo erat acturus, æstimationem adhibeat; dummodo licitum honorarium quantitas non egrediatur." The article concludes with a rescript applicable only to refunding part of a fee, "eam duntaxat pecuniam quæ modum legitimum egressa est repetere debet." S. 12 relates to securities and bargains for fees, and gives the rule when a suit can be maintained thereon. The effect seems to be that, a promise while the litigation is pending does not bind; but a security given after the cause is at an end may be enforced, if the sum secured together with the sums paid do not exceed the legitimate amount.

As to this citation, it may be pointed out that it is contended by some scholars that the *Lex Cincia* was never enforced. It is, at all events, clear that it was frequently violated. The passage cited from the Digest (50. 13. 10, 11) in the above judgment is not generally interpreted in the manner in which it is read by the Court; it is the opinion of some civilians that the Prætor could fix the amount of the honorarium of the advocate, and that a claim for such might be enforced (see Bethmann-Hollwegg, *Der Civilprozess des Gemeinen Rechts*, 2. 764).

costs are less than in England; but for large and intricate cases they are heavier." "French *avocats'* and *agréés' honoraires* paid on the argument of a case may be taken to be higher than counsel's fees would be for a similar case in England by about one-third. But then, it must be observed that all is included in the lump sum paid. There are no intervening fees for conferences, consultations, or settlement of documents."

In some remarks on this subject, Mr. Newton Crane observes that as a rule the American lawyers, except in large towns, are solely dependent on contentious work for remuneration:—"It is impossible to make, even approximately, an estimate of the relative cost of litigation in the United States and England, unless we understand the wide difference that exists in the character of the practice in the two countries. There is not merely no such distinction among lawyers in the United States as prevails here between barristers and solicitors, but there is no such professional work done in that country as forms the ordinary and most lucrative employment of solicitors in this country. Here every man of any position in the community, or who has any possessions or business, has his solicitor, to whom he naturally goes for advice upon domestic, financial, and business matters, no matter how trivial or unimportant they may be. In America the layman has no solicitor or attorney as a standing adviser, and he rarely, if ever, thinks of going to a lawyer unless he contemplates or is threatened with litigation. Until within a comparatively few years, and even now, except in the larger commercial centres, an American lawyer had practically nothing to do outside the courts, save, perhaps, the drawing of an occasional will or the settling of an unusual conveyance. There are probably very many lawyers now in active and successful practice in all parts of the United States who do not make a charge for the writing of a letter, or giving advice, or for a conference or an opinion once a year. Their time is devoted almost exclusively to the work of litigation or the collection of debts. They are constantly accessible to their clients, to whom they make no charge for the interviews, or the advice they may give at such interviews, preliminary and incident to the preparation of a case for trial.

"There are no marriage settlements to be settled, for such instruments are practically unknown in America. Articles of co-partnership are rarely prepared by attornies, the partners either drafting their own articles or, as is most common, conducting their business without them. Conveyances in many parts of the country follow the forms which may be obtained from the stationers for a few pence, and even searches and abstracts and certificates of title are made by a class of

workers, not necessarily lawyers, who devote themselves exclusively to this kind of service, or by corporations organized for the express purpose of examining and, for a small premium, guaranteeing titles. The lawyer, being thus deprived of the chief source of revenue which solicitors enjoy elsewhere, is naturally obliged to fix his compensation for conducting litigation at a higher rate than he would otherwise find it necessary to do."

Mr. Daviez, whose answers are printed under the head "United States," gives some information as to the average earnings of lawyers in the State of New York. "I may add—what you probably know—that the general system of charging, with many of us, has for its foundation an idea of a *per diem* compensation. For instance, a young man who has been admitted from three to five or six years considers himself very well paid if he can average, say, $15 for each working day. From that he advances, and if he is getting $50 a day after being admitted ten or fifteen years, he is doing very well. Many of our best men, for the trial of cases, are satisfied to act as barristers for $100 a day; although I suppose a few of the leaders, in large cases where a considerable amount is involved, would not hesitate to charge $250 a day."

In Queries 11 (*a*), (*b*), (*c*), are put three hypothetical cases of a kind very common in our Courts—an action for personal negligence, an action for libel, and an action for breach of contract. The figures given in the answers are approximate, and must be taken subject to the explanations and qualifications stated by correspondents. Here are a few of the estimates as to the plaintiff's costs—

Country.	Action for Personal Negligence.	Action for Libel.	Action for Breach of Contract.
Scotland	£150 to £160	£230 to £250	£40 to £50
Germany	£50 to £60	About £6	—
Holland	£60	£60	£35
Denmark	£35	£25	£20
Spain	£12 to £14	£20 to £26	£6 to £8
New York ...	£100	£100	£30
,, ...	£50 to £100	£150	£50 to £100
Massachusetts ...	£80 to £160	£40 to £160	£40 to £50
Illinois	£60 to £100	£20 to £100	£10 to £50
Missouri	£60 to £100	—	—
California	£50	£100	—
Ontario	$250	$350	$150
Quebec	$350	$250	—

The smallest charges appear to be in Spain. The highest are in England, Scotland, the United States, and India.

In all the countries from which returns have been obtained Court fees [1] are charged, usually in the form of stamps. Nowhere are law taxes abolished. In most countries these taxes do not appear to be imposed according to any settled principle. In France a great change was made in 1892, chiefly through the exertions of M. Brisson. By the *Loi sur le Frais de Justice*, 1892, a large number of fees was abolished, and a "*droit proportionnel*" substituted, the latter being based on the amount of the value of the matter in dispute. The highest Court fee is on the registration of the judgment. The principle of making the Court fees vary with the amount in dispute is carried out in Germany, as explained below.

3.—*ANSWERS TO QUESTIONS.*

SCOTLAND.

The following answers to the above questions which relate to Scotland, are by Mr. Æneas Mackay, Sheriff of Fife, and author of the well-known work on the "Practice of Court of Session":—

"The Civil Courts in Scotland are, for all practical purposes, two: the 'Court of Session,' or Supreme Court, which sits in Edinburgh; and the 'Sheriff Courts,' which sit in the counties, and answer to the English County Courts, but have a much more miscellaneous jurisdiction. Their jurisdiction is, by recent legislation, except as regards land and consistorial (matrimonial) cases, and a few other matters, as wide as that of the Court of Session, subject to appeal to the Court of Session.

"The legal profession in Scotland is, as regards litigation, divided into two branches [2]: advocates who answer to barristers; and law agents who answer to solicitors or attorneys, and are divided into several corporations—writers to the signet (W.S.), solicitors before the Supreme Courts (S.S.C.), and various local corporations or associations, who all derive their right to practise before the Courts from their enrolment as law agents under the Law Agents Act, 1873.[3] The advocates have a general right of audience before all the Courts, and the law agents have a right to practise before all, and a right of audience in

[1] See as to origin of Court fees, Bethmann-Hollwegg, *Der Römische Civilprozess*, III. s. 48.

[2] 36 & 37 Vict. c. 63, s. 1; "Manual of Practice of Court of Session," 1893, p. 31.

[3] 36 & 37 Vict. c. 67.

the Sheriff Courts, and in certain summary procedure in the Court of Session. *SCOTLAND.*

"The statement in the memorandum as to costs of litigation in the superior Courts of England is a correct statement of the practice in the Court of Session in Scotland, with two exceptions:

"(1) The fees of advocates are not merely payable, but are in practice, with rare exceptions, paid in advance.

"(2) There is no higher or lower fixed scale of costs in the Court of Session, although there is in the Sheriff Court. But the costs are in various ways (*e.g.* the fees of counsel and of agents) in practice less in cases of small value or small importance.

"The following are answers to the questions put:—

I.—Legal Remuneration.

"(1) Legal remuneration in contentious matters is regulated by statutes; rules of Court called Acts of Sederunt, because passed at sittings of the judges of the Court of Session; and in some cases by custom only (*e.g.* in the case of fees of counsel).[1] They may be varied by special contract, but such contracts are not common.

"(2) The remuneration does in practice vary in some degree according to the value of the subject in dispute.[2] There is no special provision by statute or Act of Sederunt as to this, except in the Sheriff Court, where there is a provision for expenses according to a higher or lower scale.

"In the Court of Session a similar result is brought about less directly by (*a*) smaller fees in cases of smaller value; (*b*) the practice or power, frequently exercised by the Court, of modifying at a fixed sum the whole expenses chargeable against the opposite party; and (*c*) the audit of the accounts, item by item, by the auditor (taxing master) of the Court, who disallows, subject to an appeal to the Court, any charges he considers improper or excessive, having regard to the value and whole circumstances of the case. There is also a statutory provision by which, in an action for damages, when a pursuer recovers by verdict less than £5, he is not entitled to expenses, unless the judge certifies that the action was brought to try a right besides the mere right to recover damages, or that the injury in respect of which the action was brought was malicious, or, in actions for defamation or libel, that the

[1] See as to advocates, "Manual of Practice," p. 27; as to law agents, p. 38.

[2] Act of Sederunt, December 4, 1878. Dove Wilson, "Practice of Sheriff Court," 3rd edit., p. 875.

SCOTLAND.

action was brought for vindication of character, and was fit to be tried in the Court of Session.[1]

"(3) The successful suitor is, as a general rule, allowed costs against the unsuccessful suitor. The amount is fixed, in cases of disagreement, by the auditor, to whom the Court remits the account for taxation, and whose taxation is subject to appeal, but is rarely altered by the Court.

"The amount is taxed according to a customary scale, called as 'between party and party,' in distinction to the scale called as 'between agent and client;' and it is not a complete indemnity for all costs incurred by the successful litigant, and often falls very far short of it.

"(4) The law agent (solicitor) is entitled to be paid by his client his outlays, and in some cases his fees, in excess of the costs allowed as between party and party.

"The rule of taxation between party and party and agent and client will be found at pp. 667, 668 of the 'Manual of Court of Session Practice.'

"(5) There is a fixed scale of charges for witnesses for their attendance at the trial.[2]

"(6) There is a distinction between the remuneration in the Court of Session and the Sheriff Court, which are the Superior and Inferior Courts in Scotland for civil business. In the former the remuneration is fixed partly by Act of Sederunt and partly by custom; in the latter, by Act of Sederunt only.

"(7) A law agent (solicitor) is required to render a detailed account of the costs of litigation to his client. The client is entitled to have the account of the agent taxed as between agent and client by the auditor; but if he insists on taxation, the agent may remodel the items in his account.[3]

"(8) It is competent, though not customary, to stipulate that remuneration shall depend upon the results of litigation.[4]

"(9) It is not customary for the agent to insist upon payment on account at the outset of litigation, or on payment from time to time during its progress; but, of course, if he has any doubt of his client's solvency, he would do so. The agent is often considerably out of pocket in consequence of not receiving the costs of litigation beforehand, for he requires to pay not only necessary outlays, but also the fees of Court and of counsel. He is accordingly given the right to take decree for the expenses against the opposite party in his own

[1] 31 & 32 Vict. c. 100, s. 10; "Manual," p. 646.

[2] Act of Sederunt, July 15, 1876; "Manual of Practice," pp. 654, 674.

[3] "Manual of Practice," pp. 39 and 678.

[4] As to advocates, "Manual of Practice," pp. 27, 28; as to law agents, p. 38.

name, and to recover them for his own behoof. As to the conditions of this right, see 'Manual of Practice,' p. 40.

"(10) Security for costs, called 'caution for expenses,' is required from a plaintiff, of which the most common case is that of a bankrupt plaintiff. The other cases are too detailed for statement here, but will be found in the index to the 'Manual of Practice,' *sub voce* 'Caution,' p. 698.

"(11)	(*a*)	Plaintiff's (pursuer's) expenses	...	£150 to £160
	(*b*)	„ „ „	... ...	£230 „ £250
	(*c*)	„ „ „	... ...	£40 „ £ 50

"The defender's expenses for the proceedings in (*a*) and (*b*) might be somewhat, though not much, less; but, as he would have to pay the jury in (*a*) £6, and in (*b*) £12, his whole expenses could not be put at a lower figure.

"The estimate for (*c*) includes the expense of a diligence to recover documents. If such were not required, the expense might be about £10 less. The defender's expenses for (*c*) might be about £5 less than the pursuer's, say £35 to £45, and without a diligence, £25 to £35.

II.—Court Fees.

"(1) There are Court fees.

"(2) They are fixed by statutes or rules of Court under statutory powers.[1]

"(3) It is difficult to state that they are fixed according to the value of the matter in dispute or any other principle.

"(4) They are paid in advance by stamps.[2]

"(5) The fees differ in the Superior and Inferior Courts.

"(6) Persons admitted to the 'Poors Roll' are exempted from such fees at the outset, but no other persons. If they recover expenses against their opponents, they recover such fees, and are bound to pay them to the proper officer.[3]

"(7) Fees of Court are recoverable by the successful party from the unsuccessful.

"(8) The State, which now draws all such fees, obtains security by their prepayment in stamps."

[1] 52 & 53 Vict. c. 54; 58 Vict. c. 14.
[2] 31 & 32 Vict. c. 55; Treasury Order, March 25, 1873.
[3] "Manual of Practice," p. 164.

FRANCE.

From France two elaborate reports have been obtained. The first is by Mr. Thomas Barclay, of Paris, the well-known writer on international law. Mr. Barclay thus describes the constitution of the French Courts and their procedure :—

"Leaving out of consideration, for the moment, the tribunals for the recovery of small civil debts and the redress of small civil wrongs, called the Tribunals of the Juge de Paix, and administrative criminal matters, the situation is as follows :—

"DIVISIONS OF COURTS AND TRIBUNALS.

"The Courts of First Instance are—

"1. The Civil Tribunal for the trial of all cases not within the jurisdiction of the Tribunal of Commerce.

"2. The Tribunal of Commerce, for the trial, generally speaking, of commercial cases and difficulties between commercial men. Sometimes discussion, however, arises over the definition of commercial jurisdiction.

"These two tribunals comprise the jurisdiction and powers of the English Divisions of Queen's Bench, Chancery, and Probate, Divorce and Admiralty, including Bankruptcy. The Tribunal of Commerce answers in many respects to an English County Court.

"Causes before the Civil Tribunal are conducted as to procedure by the *avoués*, who have the monopoly of such procedure, and are argued or pleaded by the *avocats*. Attached to the Tribunal of Commerce are certain persons called *agréés*, who are supposed to be men with a legal commercial training, and who have virtually the monopoly of pleading there. The *agréés* conduct, also, the procedure in commercial cases, as do the *avoués* in civil causes. Practising in connection with both these tribunals, and all those subsequently mentioned, is an officer called a *huissier*, who has various functions, including the service of process, the attesting of various facts and states of things, the notification of judgments, the levying of executions, etc.

"The Civil Tribunal is composed of several Chambers, and there are a President, judges, and supplementary judges attached to each Chamber. The Tribunal of Commerce is not divided into Chambers, but classifies its work amongst different days of the week, and details off a rota of its judges to attend to each of the several branches.

"The Civil Tribunals have commercial jurisdiction in places in the provinces where there are no Tribunals of Commerce, and naturally both tribunals are affected, as to the numbers of chambers and judges, as well as regards the strength of the local bar and other lawyers, by the importance of the place.

"The Court of Appeal of Paris is composed of four chambers, each having its President and staff of judges and supplementary judges. Its procedure is conducted by its *avoués*, who have the monopoly thereof, as in the case of the *avoués* of the Tribunal of First Instance. Its causes are pleaded by the same *avocats* as in the Civil Tribunal of first instance. The Court of Appeal takes cognizance of cases coming from both Tribunals. This Court, as its name implies, answers to the English Court of Appeal. In the provinces, the nominal strength of the Bench varies according to the importance of the place.

"The Court of Cassation answers to the former English Courts of Error, inasmuch as it has the power of reversing wholly, or amending as to part, the judgments of the several Courts of Appeal. Both procedure and argument of the cases is exclusively in the hands of the *avocats* of the Court of Cassation. There are no *avoués* or analogous officers in this Court.

"PROCEDURE.

"*Civil Tribunal of First Instance.*

"The proceedings are commenced by an assignation, which is something like an English writ and statement of claim combined. This is prepared by the *avoué*, and served by the *huissier*. Personal service is not required in any case. This is followed by a *constitution* of *avoué* by the defendant, equivalent to entry of appearance. Then ensues certain documentary procedure between the *avoués*, in the nature of pleadings—that is to say, pleadings somewhat in the nature of those in use prior to the Judicature Acts, which, after lengthy recitals, containing little or no information of interest to the parties or to the Court, wind up with a general joinder of issue. When the documents (which are never afterwards referred to except in making out the bills) have been completed, the cause is set down in the general roll. After some time, the cause is distributed or assigned to a certain Chamber of the Tribunal, and an *avocat* is instructed to watch it before such Chamber. The papers are then handed to this *avocat;* the cause comes on, is argued, and judgment given. The judgment is drawn up by the registrar (*greffier*). It is a lengthy document, and contains the reasons

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on which the judgment is based. This judgment is signified and executed by the *huissier*.

"At almost any stage of the procedure, including the hearing, the defendant may make default, and leave the plaintiff to take judgment by default; but he has the right, subsequently and before actual realization of execution, to 'make opposition' and have the matter reheard. The same thing may be done in the case of a counterclaim.

"*Tribunal of Commerce.*

"The proceedings commence as in the Civil Tribunal with an *assignation*, which is returnable on a certain day. There is no entry of appearance or preliminary pleadings. On the return of the *assignation*, if both parties appear, and there is apparently a dispute, the matter is sent at once without pleading, either for the examination of a judge in chambers, or, if the matter be complicated, to an *arbitre-rapporteur* (official referee), to be reported upon. Both the judge in chambers and referee have general powers of settling matters if the parties consent, but neither can of himself decide a case. Before the judge in chambers, when the case is sent direct to him, each party brings whatever documents he wishes to put in. The judge's questions are answered, and judicious observations may be usefully made; but there is no pleading or lengthy argument. When, however, the case is weighty, and has been examined before a referee and subsequently argued in Court, and is then referred to deliberation in chambers, the arguments and discussions before the judge there are sometimes very lengthy, and are from time to time adjourned.

"A case having been sent by the tribunal to an official referee, the latter convenes the parties before him, and the matter proceeds, with adjournments, as in England. It is customary for each party, after discussion of the case, to summarize his points and arguments in a statement. These are mutually communicated between the parties, and are sometimes replied to. The 'arbitrator reporter' then proceeds to make and file his report. This is opened by the tribunal, and the parties take copies. If both parties, on seeing the report, should be content to accept it, judgment may be entered at once. This, however, very seldom happens. The usual course is for the report to be set down for argument.

"The series of papers are made up and handed to an *agréé*, and a great deal of work is done in getting up the case for argument on the report. Further documents may be produced beyond those in evidence before the referee. The case comes on for argument before a full bench of judges, and the *agréés* argue it, apparently for their own amusement, for

no one pays much attention to them. At the close of the argument, the *dossiers* of papers of all parties are handed in, and the case is sent for the examination of a judge in chambers. The parties attend before this judge in chambers, and the matter is again threshed out, as mentioned above. The judge makes his report to the tribunal, and the parties remain unaware of its nature. Either at the next or a later day of hearing of that class of cause, the full Court by its President gives judgment. It is given very summarily, and is that of the entire Court. The judges in no case give separate decisions. The judgment is then drawn up by the registrar, and is signified and executed by the *huissier*, as in the Civil Tribunal.

"Sometimes there is a preliminary question of principle or law to be tried before the questions of fact or detail are gone into. In this case the cause is placed in what is called the 'grand roll,' when it is argued before a full bench of judges in the first place; but the result is generally the same, unless the plaintiff fail altogether, that is to say, the assistance of the referee and the judge in chambers is resorted to.

"On the other hand, there is an immense number of cases decided nearly every day without argument by the Tribunal of Commerce. If the defendant wants time, he can accept judgment in twenty-five days, or longer. If the plaintiff has an accepted bill or other similar written document, constituting what is called a 'titre,' judgment is often given immediately, unless defendant can show that *primâ facie* he has a defence to all or part of the claim. The same power of letting judgment go by default and subsequently opposing it, and obtaining a rehearing, exists as on the civil side; but many judgments are let go by default and are not afterwards opposed by the parties.

"The evidence before the Tribunals of First Instance, like that before the Courts of Appeal and Cassation, is principally documentary. No witnesses, except in corroboration of a document previously produced, are allowed to give evidence, and then only by special order. Even then there is no examination and cross-examination. The questions are simply put by the judge or official presiding for the time being. Before the Commercial Court almost anything is accepted by way of evidence, but any but written evidence is distrusted. There is no discovery of documents or interrogatories.

"Each party, as a rule, communicates to the other the documents on which he intends to rely, and these only are put in. Similarly, there are no applications for time, for particulars, or other matters in the way of simple procedure. On the other hand, there are frequently applications for the nomination of experts, the preservation or sale of property, intervention of parties, etc.

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"*Court of Appeal.*

"The procedure before the Court of Appeal is similar to that before the Civil Tribunal of First Instance. The same formal and useless documents are prepared and signified between the *avoues*: the appeal is set down and assigned to a particular Chamber; the *avoue* is instructed, the appeal heard, and the judgment given and signified, as before. Cross-appeals can be brought, and documents not produced in first instance can be put in.

"*Court of Cassation.*

"A judgment of the Court of Appeal which is alleged to contain errors of law is submitted, as soon as the *pourvoi en cassation* is entered, to the examination of a *conseiller-rapporteur* (reporting judge). The case then comes before what is called the *Chambre des Requêtes* for admission. The *Chambre des Requêtes* can reject a *pourvoi*: in which case there is an end of the matter. On the other hand, it can admit the *pourvoi*: and the case is then referred to a judge-reporter to examine and report upon to the full court. The case eventually comes on for argument before the full Court, which either sustains or quashes the judgment of the Court of Appeal.

"The Court of Cassation does not give judgment on the facts. It simply declares the true state of the law, and with this declaration sends the case to another Court of Appeal to be argued out on the facts."

Mr. Barclay adds the following remarks as to—

"Costs.

"Attached to each code of procedure is a scale of so-called fees to be taken by the *avoués* and other officers of the courts. These fees are, however, so insignificant that no office could be kept going upon them unless they were supplemented. The practice is, therefore, to supplement them by what are called the *honoraires* of the *avoué* or other person conducting the case. This *honorarium* is based, not on an itemized account of the work done, as in England, but chiefly on the amount at issue, the importance of the interests involved, and the circumstances of the client.

"The *avocats* are not bound by any scale; but an able man with a reputation will always command a heavy fee. The *avocats* also look at the circumstances of clients, importance of cases, etc.

"The *agréés* of the Tribunal of Commerce, when they argue cases,

claim their *honoraires* in the same way. The fees claimed by *agréés* are sometimes higher in proportion than those which would be claimed by *avocats* of a similar standing for a case of like importance on the civil side. French *avocats'* and *agréés' honoraires* paid on the argument of a case may be taken to be higher than counsels' fees would be for a similar case in England by about one-third. But then, it must be observed, all is included in the sum paid. There are no intervening fees for conferences, consultations, or settlement of documents.

"The Court fees prior to hearing are comparatively light; and there are no summonses, orders, affidavits, etc. Official referees charge also according to the importance of the case.

"The heaviest Court fee taken is that for the registration of the judgment, which is calculated *ad valorem* on the amounts involved, and not simply on the amounts recovered. It very often happens, too, that documents produced, involving sums of money, may not have been registered; and their registration is then insisted on.

"As an instance, a case of contract was heard. The original contract was for £250,000. But all but £25,000 had been settled prior to action. Certain further deductions were allowed in course of proceedings, and ultimately a judgment was given for £2000. The registration, however, amounted to £800, the Government claiming on the full amounts, with certain deductions which had no reference to the sum awarded by the judgment.

"To conclude, for small cases French costs are lower than in England, but for large and intricate cases they are heavier.

"Another point must be borne in mind—that only the Court fees paid out of pocket, and, in the case of *avoués*, certain of the before-mentioned scale fees, are recoverable against an unsuccessful party, but nothing in the way of profit charges or *honoraires*."

The following is the reply of M. Rudolphe Rousseau, the well-known Advocate of the Court of Appeal at Paris:—

"Jurisdictions in France are divided into administrative and civil jurisdictions.

"The administrative jurisdiction takes cognizance of questions arising between the Government and private persons, with respect to an administrative act or contract. The principal administrative jurisdictions are the Conseil d'État, La Cour des Comptes, Les Conseils de Prefecture, etc.

"Before the *Conseil d'État*, hearing cases in dispute, the parties are

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represented by the *Avocats au Conseil d'État et a la Cour de Cassation* (for they practise also before the Cour de Cassation). Before the other administrative Courts parties may conduct their own cases. In some instances they may merely put their defence into writing; in other instances they are permitted to plead before the Court (for example, before the Conseils de Prefecture) either by themselves, by an *avocat*, an *avoué*, or by any agent whom they may choose.

"The civil jurisdiction is composed of three kinds of jurisdiction—

1. Criminal jurisdiction.
2. Commercial jurisdiction.
3. Civil jurisdiction, properly so called.

"The Criminal Court, properly so called, deals with crimes, offences, and *contraventions*. It consists of police Courts, Courts of correctional police, the Courts of Appeal sitting *correctionellement*, and the Courts of Assize. It is the business of one section of the Cour de Cassation, called the Criminal Chambers, to annul the decisions of the lower courts in case of the decisions being contrary to law. Before the Cour de Cassation, the parties are represented by *avocats* of the Conseil d'État and of the Cour de Cassation. Before the other jurisdictions they may plead in person, but they may also have the assistance of *avocats* and *avoués*. In certain cases, indeed, the presence of the parties is obligatory. Among the criminal jurisdictions may also be mentioned the Military Tribunals—that is to say, the Courts Martial and the Courts of Revision.

"Commercial disputes come before the commercial jurisdiction, composed of the Tribunals of Commerce and the Courts of Appeal sitting to decide commercial cases. Before the Tribunal of Commerce parties may appear in person or be represented by an agent of their own choice, who is usually an *agréé*. In all cases parties may be represented before the Court by an *avocat*. Appeals from the Commercial Courts come before the Courts of Appeal, the same courts which take cognizance of the appeals of Courts of First Instance. Thus the parties are represented in the Courts of Appeal by *avoués*, who have the assistance of *avocats*. Lastly, in commercial cases as in civil cases, the decisions of the Courts of Appeal may be impeached, for violation of the law, in the Cour de Cassation. Before that Court the parties, as already stated, are represented by *avocats* of the Conseil d'État and the Cour de Cassation.

"The civil jurisdiction, strictly so called, takes cognizance of all disputes not assigned by law to special tribunals—that is to say, of nearly all cases of private litigation. It includes the *Tribunaux de Paix*, the *Tribunaux de Première Instance*, and the Courts of Appeal.

All these tribunals are subject, in case of their decisions being contrary to law, to the *Cour de Cassation.*

"The *Tribunal de Paix* or *Juge de Paix* takes cognizance of small disputes. Before a *Juge de Paix*, the parties may appear in person, or they may choose a representative.

"Before the *Tribunaux de Fremière Instance*, called also simply Civil Courts, and before the Courts of Appeal, parties must be represented by *avoués—avoués de première instance* before the Courts of First Instance, and *avoués d'appel* before the Courts of Appeal. The *avoués* are assisted by *avocats* in pleading before the Court. It is only in exceptional cases, and with the permission of the Court, that a litigant can plead in person; and even in such a case, the litigant cannot dispense with an *avoué.*

"Before the Cour de Cassation parties are represented by *Avocats de la Cour de Cassation,* who combine the functions of counsel and solicitor.

"In the answers to questions which follow, we have taken the most common case, that of a dispute before a Civil Tribunal of First Instance, or before a Court of Appeal.

I.—Legal Remuneration.

"1. The fees of *avocats* are fixed by agreement; in case of dispute, the Conseil de l'Ordre des Avocats decide the matter. The fees of *avoués*, on the other hand, are determined by law: the chief scales in civil cases are contained in the decrees of February 16, 1807, and in the Ordonnance of October 10, 1841. In principle, the fees fixed by the scales cannot be modified by private agreement. But when, outside his professional duties, the *avoué* has taken special steps and done work not imposed or expected of him by law, he has a right to special *honoraria*, which are arranged between the *avoué* and his client. This is the common case. If they disagree, the *Chambre de Discipline des Avoués* is called on to decide, and it fixes the sum to be paid to the *avoué.*

"2. The fees of *avocats* are naturally estimated with reference to the expenditure of time and labour involved. Fees are also allowed to *avoués* for extra work and trouble.

"In the case of the fees of the *avoués*, the scale makes a distinction according as the case is an ordinary one or a summary one, and according to the stage at which the case ends.

"Summary cases are those in which the matter in dispute does not exceed 1500 frs., or which are simple and plain in character; for

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"In all cases, whether summary or ordinary, the fees fixed by the tariff vary according to the stage at which the proceedings end.

"3. The successful party is entitled to his expenses from the losing party. In summary cases the amount of costs is fixed by the judgment itself. In ordinary cases, on the contrary, the judgment does not fix the amount of costs. In case of dispute as to their amount or refusal to pay, the costs are assessed by a judge who was not a party to the judgment.

"In summary cases, as in ordinary cases, the costs are taxed on a statement made out by the successful party, who is bound to produce particulars and vouchers. The losing party has the right, if he thinks himself wrongly charged, to object to the taxation, and to take the opinion of the Court after argument.

"The costs include only the reimbursement of *des actes de procédure*, the legal fees of the *avoués*, and, in case of there being such, the allowances paid to witnesses and the *honoraria* paid to experts. Each party has to bear, with no claim for recovery from the other side, the fees of his *avocat* (except a trifling fixed indemnity allowed to the successful party), and the special *honoraria* paid to his *avoué*.

"4. This question has already been answered in the affirmative.

"5. Allowances paid to witnesses are determined by law, particularly the first decree of February 16, 1807, in civil matters. The sum allowed varies according to the profession of the witness. The amount of the travelling expenses, to which the witnesses have a right, is also fixed by law according to the distance travelled.

"6. The fees vary according to the order and degree of the jurisdiction; the tariffs show how. I speak, of course, only of the legal fees given to *avoués*. The fees of *avocats* and the special fees of the *avoues* are arranged with the client.

"7. *Avocats* are never bound to furnish a detailed bill of fees. They do not even give receipts for the fees which they receive, excepting when the payment is made to them for a third person.

"The *avoué*, on the contrary, is obliged to furnish a detailed account,

the forms of which are determined by the second Decree of February 16, 1807, and article 21 of the law of January 26, 1892. This bill must contain, item by item, the particulars of all payments of fees to the Treasury, and outlays of any kind, and the fees allowed by the scale for every step taken in the suit.

"8. The agreement called *quota litis* is considered illegal, and is strictly prohibited. *Avocats* or *avoués* accepting this mode of remuneration would lay themselves open to disciplinary penalties.

"9. A *provision* or payment in advance is frequently asked of the client at the beginning or during the course of the case.

"10. The general rule is, that no caution or security can be claimed from the plaintiff. The only exception is with regard to foreigners, who, if they are plaintiffs, may be called on to furnish caution in all cases. Persons of certain nationalities are exonerated from the payment in virtue of diplomatic treaties; for instance, the Swiss and Italians. In all cases a foreigner is exonerated from the payment of caution if he is in possession of sufficient *immeubles* in France to pay the expenses of the trial.

"11. (*a*) In the first example, the costs of the procedure before the *Tribunal de Première Instance* would amount approximately to 600 frs. for the plaintiff and 400 frs. for the defendant. Besides this, the registration of the judgment would cost, at the rate of 3.75 frs. per cent. (a fixed sum imposed for the interest on damages), 486.75 frs. To these various sums must be added the fees of the advocates and the special fees (*honoraires extraordinaires*) which may be due to the *avoués*. These special fees vary considerably in amount according to circumstances.

"In Appeal cases the cost of procedure would probably be increased by half. If, however, the inquiry were not recommenced before the Court (which would usually be the case), the additional expense would be inconsiderable. Another proportional fee of registration would not, in this case, have to be paid. The fees (*honoraires*) of the advocates and the *avoués* would usually be higher.

"If the case were in the Tribunal of Commerce the costs would be a little less, and they would be so if it were before the Tribunal of Commerce or the Court of Appeal judging commercial cases.

"(*b*) In the second case cited the procedure would differ very much according as the case was brought before a Criminal Court (*Cour d'assises, tribunal de police correctionelle, Cour d'appel jugeant correctionellement*) or before the Civil Courts. In the same way the fees would vary considerably according to the circumstances. It is therefore impossible to form, even approximately, an estimate of the costs.

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"(*c*) In the third example the case would generally be taken before the *Juridiction commerciale*.

"Before the Tribunal of Commerce the cost of suit would not reach 100 frs. for each party; that is, if the judge did not think proper to remit the case to an arbitrator (*arbitre rapporteur*), whose fees would have to be added to the costs. The charge for registration of the judgment refusing a claim would also be very small (40 frs.); but any letters which have been produced during the proceedings must be registered at the same time with the judgment, and may be subject to a fee of registration varying according to the nature of the agreements which they contain. The amount of the fees due to *avocats* and *agréés* before the Tribunals of Commerce vary according to the circumstances of the case.

"The costs of a trial before the Appeal Court in commercial cases (*jugeant commercialement*) may be doubled; but it is very rare that the Court asks for a new report from the arbitrators (*nouveau rapport d'arbitre*), and this diminishes the amount by the arbitrator's fees.

II.—Court Fees in Contentious Matters.

"1. The law fees in contentious matters are the fees for registration and stamp fees established by the laws of the 13th Brumaire Ann. VII. (law as to stamps, November 3, 1798) or the 22nd Frimaire Ann. VII. (law of registration, December 12, 1798). The fees established by these laws have been frequently modified, the latest change being made by the laws of January 20, 1892, and August 28, 1893.

"2. Like all other taxes, the registration and stamp fees can be imposed or altered only by a law.

"3. The stamp fees are fixed fees, payable in proportion to the size of the paper employed in each *acte de procédure* liable to stamp duty. The registration fees are also fixed, with the exception of fees payable on judgments awarding a sum of money or carrying out a conveyance of property. The fixed fees of registration are payable on each *acte de procédure* according to the legal scale for that particular class of *actes*. On the other hand, the fees payable on the above class of judgments are proportional fees. They vary according to the pecuniary amount and according to the nature of the judgments.

"4. A distinction must be made between stamps and registration fees. The former are necessarily paid in advance; the Government sells the stamped paper on which must be drawn up *the actes de procédure*, and gives no credit.

"As to the latter fees, the law allows a period of time for presenting the *acte* liable to a fee for registration. Registration takes place only upon

payment. In default of registration within the prescribed time, the parties are liable to pay double duties and certain fines.

"5. The stamp fees are the same in all Courts. The registration duties are, in general, higher in Superior Courts.

"6. Poor suitors are exempted from payment of all fees according to the conditions prescribed by the law of January 22, 1851, as to *assistance judiciaire*.

"A party entitled to *assistance judiciaire* is also exempted from payment of all costs, including the *honoraire* of his *avocats* and *avoués*.

"7. The stamp and registration fees are included in the *condamnation aux dépens*, and the successful party recovers them from the loser.

"8. The State has three securities for the payment of the above fees—

(*a*) Penalties (double fees or fines) payable in case of contravention of the rules as to stamping or registration.

(*b*) A charge on the property of persons from whom such fees are due.

(*c*) Lastly, in certain cases, the *avoués* and *huissiers* are personally liable for payment of the Court fees, and the caution money which these ministerial officers give to the State upon entering on their duties, is a guarantee for the payment of the fees."

BELGIUM.

The following very clear account of the procedure and methods of legal remuneration in Belgium is by M. Henri Levy, Conseiller à la Cour d'Appel, Brussels :—

"A. There are no Court fees other than *droits de timbre*, registration fees, or *droits de greffe*.

"B. *Honoraria* are paid to the *avocats* in cases in which *avocats* are employed.

"The amount of the *honoraria* varies according to the importance and difficulty of the case, the time spent in the examination of the case, and the position and reputation of the *avocat*. Account is also taken of the means of the client and the more or less favourable result.

"C. The remuneration is considered as of the nature of a *honorarium*

"The fees are not, as a general rule, paid in advance. Nevertheless, for some time back there has grown up a custom of requiring a preliminary payment of part of the *honorarium* known as *provision*.

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"The *honoraria* are not recoverable by the successful party from the unsuccessful.

"*Honoraria* paid to witnesses for attendance in Court. These *honoraria* are not a complete indemnity to the witnesses. The amount is regulated by law (in civil matters, by Article 167 of the decree of February 16, 1807; in criminal matters, by Articles 31 and 78 of the *arrêt royal* of June 18, 1853).

"These costs are borne by the losing party.

"Witnesses living in foreign countries, not being compelled to attend a Belgium Court, may make, with the party desirous of obtaining their evidence, a contract regulating the amount of their remuneration. But the excess of this sum over the legal tariff is not necessarily recoverable from the losing party.

"D. *Honoraria* paid to the *avoué*. This amount depends chiefly upon the number of interlocutory proceedings in the suit, the length of the documents, the importance of the case, and the number of witnesses in attendance. There is a higher and lower scale, according as the case is *ordinaire* or *sommaire* (Articles 67, 68 of the decree of February 16, 1807, and Article 404 of the Code of Civil Procedure), and also according to the rank of the tribunal (First Instance, Appeal, or Cassation) to which the case is assigned.

"The party who has retained an *avoué* in a suit is responsible for all costs duly incurred, including the *droits de timbre*, *droits de greffe*, and *droits d'enregistrement*, as well as the remuneration of the *huissiers* and witnesses, which are generally advanced by the *avoué*, who, however, almost always insists upon a payment down by his client.

"The *avoué* is bound to furnish to his client a statement of his costs and expenses.

"The successful party has a right to payment of costs against the unsuccessful party. In the end of a dispute as to the costs, the *avoué's* bill is submitted to the President of the Tribunal.

"Before answering the various questions, it is expedient to point out what are in Belgium the different classes of persons whose business it is to bring suits before the courts.

"1. The *huissiers*. They are ministerial officers whose business it is to give notice of proceedings (*signifier et notifier les actes extra-judiciaires ou judiciaires*).

"In the case of a writ of summons, or protest, or other non-judicial proceeding, the party setting the *huissier* in motion is responsible for his expenses. On the other hand, in the case of judicial proceedings an *avocat* or *avoué* has instructed the *huissier*; and, as a rule, the

huissier looks to the *avocat* or *avoué* for his remuneration. As security for such expenditure, *avoués*, and generally *avocats*, insist upon obtaining a *provision* or payment in advance from their clients.

"2. The *avoués*. Their duty is to represent the parties in the courts. Their employment is necessary in the Civil Tribunals. This is not so in the *Tribunaux de Commerce;* there the parties may appear in person. In point of fact, however, *avocats* always appear before the Tribunals of Commerce.

"There is a class of *avoués* for the Tribunals of First Instance, and another class of *avoués* for the Court of Appeal. Those who practise in the *Cour de Cassation* are termed *Avocats à la Cour de Cassation*, and are among the leaders of the Bar. The last class exercise the functions in the *Cour de Cassation* of the *avocat* and the *avoué*.

"3. The *avocats*. They are the counsel chosen by the parties to state and argue their case. In Belgium the part of the *avocat* is not limited to this. The Belgium *avocat* is in reality *dominus litis*. He conducts or directs all the procedure, and the work of the *avoué* is often merely that of a copying clerk. Accordingly the uselessness of the *avoué* in Belgium has often been pointed out, and the suppression of the order has been demanded. Such a measure would be favourably received both by clients and the Bar.

I.—Answers to Questions.

"1. The professional *honoraria* of the *huissiers* and *avoués* are regulated by law (decree of February 16, 1807), and it is not permissible to contract one's self out of the legal tariff by a special contract (except, of course, in the case of matters not within one's legal functions).

"The professional *honoraria* of advocates are settled *à l'amiable* by the *avocat* and his client. But in case of disputes there is a reference to a Council of Discipline of the Order of *Avocats*, or to the Courts, if the *avocat* thinks fit to sue his client. This, which happens sometimes, is opposed to the traditions of the Bar.

"2. The *honoraria* of the *huissiers* and the *avoués* are fixed by law, which gives a special tariff for each act and procedure by ministerial officers. For the scale reference must be made to the decree of February 16, 1807.

"The *honoraria* of *avocats* vary according to the value of the subject-matter of litigation, its duration and difficulty. They vary also according to the position and disposition of the *avocat*. One who is very distinguished may charge much less than another by no means his

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professional equal. It is impossible to lay down any precise rule on this point.

"3. The successful party has the right to payment of expenses (expenses of *huissiers*, *avoué*, and law taxes) by the unsuccessful party. In the case of disagreement as to the expenses, the amount is fixed by the President of the Tribunal. The sum allowed is not a complete indemnity to the successful party, who must bear the expenses of the *honoraria* of his *avocat*. Nevertheless, in actions for damages, the Courts sometimes take account of the approximate sum which the successful party will have to pay to his *avocat*, and proportionately increase the amount of damages. This is only done when the case of the losing party is manifestly unjust or characterized by bad faith.

"4. This question requires no answer, so far as it relates to the *avocats*.

"As to *avoués*, they can demand nothing in excess of the legal scale (except, as I have already said, if they have done anything for their client not coming within their professional duties).

"5. The allowances to witnesses for attending in Court, together with their travelling expenses, are regulated by a fixed scale, so far, at least, as relates to witnesses dwelling in Belgium. This scale is fixed in civil cases by Article 167 of the Act of February 16, 1807, and in criminal cases by Articles 31 and 78 of the Decree of June 18, 1893.

"6. The civil scale is higher in the Courts of Appeal than in those of First Instance, and higher in the Cour de Cassation than in the Court of Appeal.

"In criminal cases the employment of an *avoué* is extremely rare; and in the case of an *avocat* it is very difficult to say whether his payment is greater than in civil cases. All depends on the importance of the case and the standing or position of the client and advocate respectively.

"7. The *huissiers* and the advocates are bound to furnish to their clients an exact and detailed account of their charges, expenses, and money paid (additional Decree of February 16, 1807).

"The advocate often confines himself to stating, in the account of charges, a round sum; but he must be prepared to give any necessary explanation and particulars to the Council of Discipline, or, in case of dispute, to the Court.

"8. The agreement *de quota litis* is contrary to the traditions of the Bar. I do not think that it is in use in Belgium, at least among advocates careful of the dignity and reputation of their profession.

"As for the *avoués*, they are obliged to content themselves with the costs fixed by the tariff.

"9. When, as is very often the case, the *avocat* is *dominus litis*, he always insists upon prepayment by the client of a payment in advance for the *avoué*, and often also for himself, without prejudice to certain complimentary *provisions* paid at certain intervals during the litigation.

"When the client deals directly with the *avoué*, which is exceptional, the latter always insists upon the payment of a *provision*. Contrary to the usage in France, the *avoué* in Belgium does not insist upon a *provision* for the *avocat*. This difference is due to the fact that in France the client generally goes to the *avoué*, who chooses an *avocat*; while in Belgium, on the contrary, the client goes in the first instance to an *avocat*, and the *avocat* selects the *avoué*. In criminal matters, it is clearly admissible for the *avocat* to require a payment down to cover his *honoraria*.

"10. The security, *judicatum solvi*, cannot be asked for in civil cases, except from a plaintiff who is a foreigner. This point is regulated by Articles 166–7 of the Code of Civil Procedure.

"11. It is almost impossible for me to answer parts (*a*), (*b*), (*c*) of this question.

II.—Court Fees.

"There do not exist in Belgium *droits de tribunal* in litigious cases, but there are *droits de greffe* and registration fees which are fixed by law.

"The first consists of the obligation to use stamped paper of various forms and various prices for different acts of the procedure.

"The *droit de greffe* consists of the obligation to pay to the State a certain sum for the enrolling of the case on the record of the Court, and for authentic copies of judgments or extracts of copies of judgments.

"The third class consist of certain fees, either fixed or proportional, according to the importance of the matter in litigation, and paid to the Treasury.

"The parties cannot be released from payment of these fees, except by obtaining an order allowing them to sue in *formâ pauperis*.

"The successful litigant recovers his Court fees from the unsuccessful party.

"No security is required by the State to assure the payment of its fees, but it can resort to the ordinary means of recovering taxes."

HOLLAND.

The following statement of the law and practice in Holland is made by Dr. Loder and Dr. Bik, Advocates and Procureurs practising in Rotterdam :—

"Preliminary Note.

"Except before the Justice of Peace, parties must be represented by a *procureur* (French, *avoué;* German, *Rechtsanwalt*). All applications, statements of claim, defence, etc., must be signed by a *procureur*. The *advocaat* may draw up the documents and plead the case, but cannot appear without a *procureur*, who is the official representative of the party. A doctor at law can be *advocaat* and *procureur*, and, as a rule, the lawyers have themselves admitted in both qualities. An advocate once admitted in one Court can plead and conduct cases before all Courts of the kingdom, but he requires the assistance of a *procureur* in the Courts where he has not been admitted as such himself.

I.—Legal Remuneration.

"1. Legal remuneration in contentious matters is regulated by law, viz. the Acts of August 28 and December 29, 1843. Special contracts varying the same would be valid if made, but they are never made by lawyers of good standing.

"2. The remuneration is according to the work done as per tariff, laid down in the Acts cited, *sub* (1). Consequently it varies with the stage at which the proceedings end, and not with the value of the subject in dispute. The value never officially enters into the matter; but if the value is very small, it may lead the lawyer to moderate his charges, although he is not obliged to do so.

"3. Article 56 of the Dutch Code of Civil Procedure states that the party against whom judgment is given shall be condemned in costs. The Court can apportionate the costs between husband and wife, brothers and sisters, relations in the descending line, and also if both parties have been put in the wrong on some points. The costs unnecessarily incurred are borne by the party who has made them. For provisional, preparatory, and interlocutory judgments the decision about the costs can be postponed until final judgment. The amount of costs in which the losing party is condemned, is fixed by the judgment. The lawyers may hand over their bills to the Court; in case they fail to do so, the Court fixes the amount according to its own

valuation. By Article 57 the charges of one *procureur* only are allowed; the party who chooses to have more than one lawyer has to pay for the others himself. Although the law means to allow a complete indemnity for all costs and expenses incurred by the successful litigant, the latter always has to pay some charges according to the standing of his lawyer, because the Courts, as a rule, allow an amount of costs with which a lawyer of good standing is not satisfied, and a respectable lawyer tells his clients so beforehand.

"4. A lawyer is entitled to be paid by his client in excess of the sum awarded by the Court, as per Article 56, cited *sub* (3). If the client makes daily calls about the case without necessity, he has to pay for his lawyer's time and trouble, but he cannot recover these costs from his opponent.

"5. There is a fixed scale of charges for witnesses for their attendance at the trial; viz. travelling expenses, not exceeding 1.25 florin (= 2*s.* 1*d.*) per five miles, and loss of time not exceeding 4 florins (= 6*s.* 8*d.*) per day or part of a day.

"6. There is no such distinction.

"7. As a rule the lawyer delivers a short note only, showing his disbursements in one item and his fee in the other item. If the client so desires, the lawyer is bound to deliver a detailed bill, which can be rendered executory by the President of the Court (after taxation) against an unwilling client.

"8. A system of payment on the case, "no cure, no pay," would be legal, if agreed upon, but it is never heard of among lawyers of good standing.

"9. This depends upon the person and standing of the client. The *procureur* may ask for payment on account under the Act of August 28, 1843; 60 florins (= £5) at the beginning, and so further on in the course of the proceedings.

"10. Only foreigners, if plaintiffs, have to deposit an amount for costs fixed by the Court, if not agreed upon by the parties (generally varying between £25 and £100). As a matter of practice, the lawyer for the plaintiff takes a deposit from his client, sufficient to cover such security, which is then settled out of Court with the lawyer for the defendant by personal undertaking, thus saving much trouble and formalities.

"11. (*a*) Each lawyer would charge £60. The Court would allow £30, making the plaintiff pay a balance of £30, and the defendant £90.

(*b*) The same amounts as *sub* (*a*).

(*c*) Each lawyer would charge £35. The Court would allow

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£18, making the defendant pay a balance of £17, and the plaintiff £53.

"*These figures are approximate*, and would run higher in intricate cases.

II.—Court Fees.

"1. Fees are charged, not by the Court, but by the clerk or registrar (*griffier*; French, *greffier*).

"2. The fees are fixed by the Act of August 28, 1843.

"3. They vary with the number and size of the documents. The clerk has to file and include stamped paper, registration dues, and fees. Only the registration dues can vary with the value of the matter in dispute.

"4. The *procureurs* in a case are responsible for the payment of the fees to the clerk who must know for himself whether he insists upon cash payment or prefers to settle monthly or so.

"5. The fees in the five Courts of Appeal and the High Court (Court of Cassation) are one-fifth higher than in the 23 District (Arrondissements) Courts and in the 107 Courts of Justices of Peace. The difference is not material.

"6. Payment of all fees is dispensed with if a party has been admitted to trial in *formâ pauperis*, but only at this side. The opponent has to pay, if not so admitted.

"7. These fees are included in the amount of costs awarded by judgment.

"8. Stamped paper is delivered by the Government for cash only, the registration dues have to be paid on delivery of the document for registration, and the clerk has to look after his fees (*vide sub* 4)."

DENMARK.

The following are the observations and answers of Dr. Thomsen, Judge of the Court of Appeal, Copenhagen[1]:—

"As far as Denmark is concerned, intelligible answers to the questions proposed on behalf of the Society of Comparative Legislation could hardly be given without prefacing a few observations on the organization of our Courts, and on our procedural methods.

"The judicial organization of Denmark may shortly be described as

[1] I owe this communication to Mr. Ernest Pollock, Barrister-at-law.

follows:—Original jurisdiction is exercised by a number of Courts, the jurisdiction of each of which is limited to a certain area, the chief ground of jurisdiction being, in civil cases, the defendant's being resident within the district over which the Court has jurisdiction, and, in criminal cases, the fact of the offence having been committed within such district.

"The town of Copenhagen forms one such district, in which jurisdiction is exercised by the following Courts:—(1) a Criminal Court, having jurisdiction in criminal cases, and also in certain smaller civil cases, such as bastardy cases, actions of slander, actions of assault, actions by workmen against their employers, or by domestic servants against their masters, for wages, and, *vice versâ*, by employers against their servants for breach of the contract of service, etc.; (2) a Court for Maritime and Commercial Causes; (3) a Civil Court, which has jurisdiction in all civil cases not coming within the jurisdiction of any of the two Courts just mentioned.

"The rest of the country is divided into some hundred and twenty districts, each having its own Court—hereinafter called a District Court—which has jurisdiction both in civil and in criminal cases, and in which justice is administered by a judge residing in the district.

"From the District Courts an appeal lies (both in civil and criminal cases) to a Court of Appeal. There are two such Courts, one for Jutland and one for the Islands, the latter being the same Court which acts as a Civil Court of First Instance for Copenhagen. Against the decisions of these two Courts, and also against those of the Maritime and Commercial Court of Copenhagen and of the Criminal Court of Copenhagen, an appeal may be brought to an ultimate Court of Appeal, called the Supreme Court.

"There are no juries, either in civil or criminal cases.

"Then a few words as to our legal practitioners. The distinction existing in England between barristers and solicitors is unknown. There is a distinction between (1) practitioners who are entitled to act as counsel before the Supreme Court (or any inferior Court), (2) such as are entitled to appear in the two intermediate Courts of Appeal (or any other Court excepting the Supreme Court), and (3) such as are only entitled to practise in the District Courts. For the sake of brevity we will call them all advocates. The only division of labour which the distinction just mentioned implies is this: that where a party wants to appeal against the decision of an inferior Court, in which his case has been managed by an advocate who is not entitled to practise in the Appeal Courts, or where a person, before the bringing of an action, has employed an advocate who does not

DENMARK. practise in the Court where the action is to be brought, such party will require to be represented by another man, practising in the Court where the appeal or the action is to be brought. The employing of more than one counsel in the management of a cause before the same Court (whether as counsel or by way of a distribution of *rôles* in the nature of that existing between the *rôles* of solicitor and counsel) is a thing unknown. The same man will do everything, from the taking out of the summons (the notice of appeal) to the final hearing (or the last written agreement). In this connection it may, however, be proper to add that partnerships of advocates are not uncommon, and, further, that not a few advocates in large practice employ as their assistants one or more men who have qualified for practice. Of the division of labour which such arrangements may imply, nothing general could, of course, be stated. Again, any advocate may have—and most do have—let us call him, an articled clerk, who is authorized to appear, on his principal's behalf, before any Court (excepting the Supreme Court) in which the latter is entitled to appear. Such a clerk will usually be a young man who, after having passed the examinations required for becoming an advocate (or being articled) wants to qualify for practice by serving three years (the term required for this purpose) as an articled clerk. It will be understood that the work of such a clerk, in these conditions, is rather cheap labour. It ought, further, to be mentioned that no advocate in independent practice devotes himself exclusively to Court work. One obvious reason for this is that Court work—at any rate excepting work in the Supreme Court—is poorly paid as compared with non-litigious work. Therefore, a man in good practice will be inclined to look upon Court work rather as a necessary evil attending his profession; and many a practitioner will leave this branch of his business as much as possible to his articled clerk.

"Then, as to the method of procedure, a few characteristics may be mentioned which, as bearing upon the nature of the work which our advocates have got to perform, seem eminently relevant to an inquiry into our way of remunerating such work. One feature which is common to the proceedings in all the Courts, whether of Appeal or of First Instance, is this, that the evidence is always written. If the Court of Trial be a District Court, witnesses *may* be examined before the Court itself *or* before another Court; whether the one or the other is to be the case, ordinarily depends upon whether the witness resides within the district of the Court or not. In the Civil Court of Copenhagen the depositions of witnesses are taken before one member of the Court, acting as an examiner, while, as a rule, the quorum for deciding a cause

in that Court is five. A somewhat similar system obtains in the Criminal Court of Copenhagen. But whether, in a given case, the examination of witnesses takes place before the Court of Trial or before another Court, it is always[1] in the nature of a separate proceeding; the depositions are taken down in writing, and the evidence at the trial will consist of a copy of such depositions. In civil cases the examination proceeds on written questions—a rule which, however, does not apply to cross-examination.

"In the Supreme Court and in the Maritime and Commercial Court of Copenhagen cases are, as a rule, argued orally. In all the other Courts cases—to put it shortly—are not 'heard' but 'read.' Not only the pleading—in the proper sense of the word—is done in writing, but the arguments too are in writing; the whole of the proceedings before the Court consisting in the parties delivering, alternately, written *plaidoyers*, in which pleading and argument—including reference to and comment on the evidence—are mixed up together, the evidence (whether consisting of written depositions or of other documents) being put in, from time to time, with the *plaidoyers*, as exhibits thereto.

"There is no fixed limit to the number of *plaidoyers* which may thus successively be delivered by each party; and as, moreover, great laxity prevails as to allowing the parties further time for delivering the same, the system is attended with extreme delay. It will readily be understood that a system like this requires comparatively little skill and training in the practitioners by whom it is to be worked, and that, as it makes but little demand on them in the way of personal attendance in court, it may conveniently be worked by men whose time is mainly occupied by non-litigious work.

"The following answers to questions I., 1 to 11, and II., 1 to 8, do not apply to bankruptcy proceedings or to the administration of the estates of deceased persons, or to execution proceedings:—

I.—Legal Remuneration.

"1. Legal remuneration in contentious matters is not regulated by statute or rules of Court. Where a lawyer has been appointed to act as counsel for a party who is suing or defending an action, *in formâ pauperis*, or for a public authority, to whom the *beneficium processûs gratuiti* has been granted (see below), or to prosecute or defend in a criminal case, his remuneration is fixed by the Court (and is paid out of a public fund). In all other cases a special contract between a

[1] At least the qualifications which this, and also some of the following statements, would require are without importance in the present connection.

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"2. In fixing the remuneration, regard will be had both to the amount of work done and to the value of the subject in dispute.

"3. As far as civil cases are concerned, the general rule may be stated to be that costs are allowed—and are allowed only—against an unsuccessful plaintiff where the action, and against an unsuccessful defendant where the defence set up, is frivolous.

"An exception from the general rule obtains in actions which, though they are brought by a private person in the form of a civil action, partake of the nature of a criminal prosecution—such as actions for libel or slander, for assault, etc.—their object being the imposition of a penalty. In cases of this description costs are always allowed against an unsuccessful defendant. (In criminal cases, the defendant, when found guilty, is always ordered to pay the costs of the prosecution—in most cases a nugatory order, as he has rarely got anything to pay with.)

"Again, it is usual to insert in bonds, leases, and many other instruments a clause to the effect that, in case of litigation, the debtor (or unsuccessful defendant) has to indemnify the other party for any expenses incurred in enforcing his claim.

"Where costs are allowed, they are usually given in a lump sum, fixed by the Court in the judgment in the action. Such sum is almost invariably below the expenses actually incurred by the successful litigant.

"In cases where there has been an agreement between the parties that the plaintiff (if successful) should be indemnified for expenses, the judgment in the action will allow costs generally, without specifying any amount, and will state expressly that the costs are to be by way of a complete indemnity. The same course is followed, without any special agreement to that effect, in actions on bills of exchange and promissory notes, when judgment is given in favour of the plaintiff for the amount of the bill or note. In such cases no special mode has been provided for having the amount due as costs fixed. The judgment-debtor, therefore, if he wants to dispute any items in the bill of costs

preferred by his opponent, has no other course left open to him than to suffer execution; which with us is a judicial proceeding, in which the person on whom execution is sought to be levied may avail himself of any defences which are not barred by the judgment. The 'Execution-Court' may, then, at his instance, disallow or reduce any items objected to. Its decision may be brought, by way of appeal, before the Court of Appeal.

"4. A lawyer is entitled to be paid by his client any lawful charges without any regard to the amount allowed as costs against the opposite party.

"5. In civil cases no compensation for expenses or loss of time is allowed to witnesses other than experts. Experts—when (as is our way) they have been appointed by the Court, at the instance of one of the parties—are entitled to a moderate fee according to a scale fixed by statute. (In criminal cases, witnesses, under a recent statute, are entitled to compensation for expenses, and may, in the discretion of the Court, be allowed a small compensation for loss of time,—the maximum amount which may be allowed under either head being fixed by the statute.)

"6. A higher fee will be charged for the management of a case in the Supreme Court than in one of the Courts of Appeal; and, usually, a higher fee will be charged for work in a Court of Appeal than in a District Court. Also, owing to the different methods of procedure, the remuneration will, as a rule, be higher in the Maritime and Commercial Court of Copenhagen than in the Civil (and Appeal) Court.

"7. There is no statutory or other rule requiring a lawyer to deliver to his client a detailed bill of costs; but it is believed to be usual among lawyers to deliver such a bill, specifying the disbursements of the lawyer (in Court fees, etc.), while his remuneration for the conduct of the case is put down in a round sum. At any rate, if a lawyer brings an action against his client to recover his fee and outlay, the latter may ask for particulars stating the items of which the sum claimed is made up.

"8. A stipulation that remuneration shall be dependent upon the results of litigation, so that, if nothing be recovered in the action, no remuneration is due, is legal; but a lawyer of good standing would not often make such an arrangement, though in an exceptional case he might. Among practitioners of a lower class such a system of payment is believed to be not uncommon.

"9. It is not customary to insist upon payment on account at the outset of litigation, or payment from time to time during its progress;

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but a lawyer may not unfrequently find it prudent to do so when he does not know his client sufficiently, especially, perhaps, if the client resides abroad. (In the case of a client residing abroad he will have a particular reason for insisting on payment of account, or being secured in some other way, if the case be an appeal to the Supreme Court, as, under the rules regulating the procedure in that Court, he will himself be liable to the opposite party for any costs which the latter may be allowed against his client.)

"10. There are no such rules.

"11. From what has been stated above regarding our system of procedure, it will appear that, in answering the questions here put, some of the particulars mentioned (such as the employing of more than one counsel, the time occupied by the trial) must be left out of consideration, or at least could only serve, in a faint measure, as a direction in estimating the quantity of work which the case should be supposed to require from those engaged in it.

"On the other hand, it is anticipated that the answers to questions (*a*) to (*c*) would be incomplete if they did not state what would be the approximate addition of costs involved in an appeal to the Supreme Court (the action being supposed to be brought, in the first instance, in the Civil Court of Copenhagen, or, in case (*c*), in the Maritime and Commercial Court of that town). Under our system of procedure there is a greater chance of the Court of Appeal taking another view of the evidence than the Court below (which, it will be remembered, decides questions of fact without the assistance of a jury, and, moreover, decides solely on written evidence, all of which may be laid before the Court of Appeal). It therefore appears highly probable that, in a case of some importance in which there is conflicting evidence, the unsuccessful party would allow himself the luxury of an appeal.

"The probable costs of the plaintiff and of the defendant respectively in cases (*a*) to (*c*) may approximately be estimated as follows (the value of the subject-matter in dispute being, in case (*c*), supposed to be £500):—

	Costs in the Court of Trial.		Costs in the Supreme Court.	
	Costs of plaintiff.	Costs of defendant.	Costs of appellant.	Costs of respondent.
	£	£	£	£
In case (*a*) ...	... 35	25	50 to 55[1]	35 to 40[1]
In case (*b*) ...	... 25	22	35 to 40[1]	20 to 25[1]
In case (*c*) ...	... 20	20	30	25

[1] The costs in the Supreme Court would be likely to be a little higher in the case of the plaintiff in the action than in the case of the defendant.

II.—Court Fees.

"1. Court fees are charged in civil cases, except in a few classes of small cases.

"2. Such fees are regulated by statute (an Act of 1814 being the principal Act now in force on this subject). The Court does not, as a rule, concern itself with fixing the amount of the fees payable. It may, however, at the instance of the registrar (who acts as collecting officer), or of one of the parties, give a direction as to whether a fee is or is not due, or as to the amount on which—as being the value of the subject-matter in dispute—the fee ought to be paid.

"3. Court fees are payable by the plaintiff (or appellant) at different stages of the proceedings, such as the issuing of the summons, when the case is first called in Court, when it is submitted for the judgment of the Court, etc., and by each party respectively on every adjournment (an extension of time for the delivering of pleading, etc., takes, in our system of procedure, the shape of an adjournment) granted at his request, on every examination of witnesses which takes place at his request, etc., etc. Also fees have to be paid for office copies of the judgment, of the depositions of witnesses, or of entries made on the record of the Court of any other proceedings. Such fees are not of the nature of *ad valorem* charges; but there is a lower scale of fees in small cases; and see below (5). In cases where the value of the subject-matter in dispute exceeds 2000 kroner (£110), the plaintiff (or appellant) must pay, an *ad valorem* fee in addition to fees just mentioned. Again (in cases not specially exempted) stamp duty has to be paid on summonses, pleadings, office copies of judgments and other proceedings, etc.

"4. The registrar may always insist upon payment in advance, but, as a rule, will not do so when the party by whom the fee is payable is represented by a lawyer.

"5. There is a higher scale of fees in the superior than in the inferior Courts.

"6. The payment of Court fees (including stamp duty)—in cases where such fees are otherwise payable—may be dispensed with, by the proper authority, when it is shown, to the satisfaction of such authority, that the party applying for such exemption has a probable *causa litigandi* and is so poor as to be unable to pay the costs of litigation. (As a rule, where such exemption is granted, a counsel is also assigned to the applicant, at the public expense.) A like exemption (including the assignment of counsel) is also granted, as, of course, to public officials who bring or defend actions in their public capacity or in connection with their office.

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"7. Where costs are allowed the successful party (see above), such costs will include the Court fees paid by him (unless the part of the proceedings in connection with which they have been paid has been either superfluous or necessitated by some fault of his own).

"8. As already stated, the registrar may always insist on payment in advance. If he does so, the party concerned, by not complying with his request, would exclude himself from obtaining what he asks for; thus, if a plaintiff, on his case being first called, fails to pay the fee then due, the action will be dismissed. Fees remaining unpaid may be sued for like any other debt (by the registrar as collecting officer, or by the proper State department), or may be recovered by a more summary proceeding somewhat in the nature of a distress. In bankruptcy, such fees, like other State taxes, rank above ordinary debts."

ITALY.

The following answers have been kindly forwarded by Signor Bodio, General Director of Statistics of the Kingdom of Italy:—

I.—Legal Remuneration.

"1. The remuneration of solicitors and barristers in contentious matters is regulated by a tariff fixed by law; the proceedings before *Uffici di Conciliazione* and *Preture* being adopted. Suitors, however, may, even for litigations before *Tribunali*, *Corti di Appello*, and the *Corti di Cassazione*, contract with barristers and solicitors as to the amount of of their remuneration without regard to the existing tariff.

"For criminal cases (*cause penali*) there is no legal tariff, and clients freely agree with their counsel as to their remuneration.

"2. The remuneration of solicitors and barristers is determined by the Court, according to the value of the subject in dispute, and the study and time necessary for the counsel to accomplish his duty. The remuneration varies not only according to the nature of the acts, for each of which there is a fee fixed by law, but also according to the several degrees of courts in which the proceedings are brought.

"3. The unsuccessful suitor is liable to repay the successful party all costs and expenses incurred. The Court, besides deciding as to the merits of the litigation, must also determine upon whom the costs and expenses of the proceeding are to fall. The suitor ordered to pay costs may appeal to the *Preture* if the judgment was pronounced by the

Conciliatore; to the *Tribunale*, if the judgment was pronounced by the *Preture;* to the *Corte di Appello*, if the judgment was pronounced by the *Tribunale;* and to the *Corte di Cassazione*, if the judgment was pronounced by the *Corte di Appello.*

"4. When there is no agreement between clients and lawyers as to the amount of remuneration, the judge must settle the amount on the basis of the legal tariff.

"5. Witnesses are paid according to their social condition, and to the distance of their dwelling from the courts entrusted with their examination. Such fees are regulated by law.

"6. As already stated, the remuneration of barristers and solicitors varies according to the nature of the courts, and to several degrees of judgment (that is, according as they are judgments of the Courts of First Instance, of Appellate Courts, or of the *Corte di Cassazione*).

"7. Solicitors (*procuratori*) are bound to keep, among other books, an account-book, in which are to be entered the sums received from their clients and the amounts expended for them. Solicitors extract from such a book the detailed bill of costs for the clients. As to the barristers (*avvocati*), the law does not contain any similar provision.

"8. There is no legal prohibition of agreements that the remuneration of barristers and solicitors shall be dependent upon the results of litigation. The clients may agree with their counsels that no remuneration shall be due in the event of the litigation being unsuccessful.

"9. The remuneration may be paid totally or partially in advance, or from time to time in the course of litigation, according to the agreements of clients and counsels, as the law does not contain any rule in regard to this point.

"In criminal matters also, the system of payment is freely arranged beween the client and lawyer.

"10. The Court which gives the judgment almost always condemns the unsuccessful suitor to indemnify the successful party for all expenses he incurred in the course of the suit, including the remuneration to counsel.

"Sometimes the judgment orders that the expenses shall be divided, or in other ways adjusted, between the suitors.

II.—Court Fees.

"1. In Civil Courts suitors are subject to judicial expenses of two kinds, necessary or voluntary. The expenses for some acts indispensable to the course of the proceeding (summons, minutes of the suit, sentences and acts for compulsory execution) are of the first kind. The expenses

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incurred solely at the request of a suitor (for example, inspection, an *alto di perizia*, etc.) are of the second kind.

"Judicial expenses are as follows:—

"(*a*) *Stamp paper*, upon which must be written judicial acts. The price varies according to the nature of the acts and the degrees of jurisdiction of the Court.

"(*b*) *Chancery fees* (that is, taxes to be paid to the Chanceries of the several courts for the copying or authenticating of acts) and *fees to judicial officers* (ushers, chancellors, and sometimes also judges in the case of judicial examinations at a particular place) *or to other persons* (experts, witnesses, etc.).

"(*c*) *Registry dues* for sentences and other acts for which certainty of the date is required. To ensure this the above acts must be registered by a public officer called *Ricevitore del Registro.*

"2. The judge entrusted with the suit fixes, at the end of the proceeding, the amount of the expenses according to the legal tariff.

"3. According to the importance of the suit, the judicial authority fixes the expenses, including the remuneration to barristers and solicitors, taking always due account of acts performed and Court fees paid.

"4. The unsuccessful suitor must pay the expenses at the end of the proceeding.

"The suitor must always pay in advance the expenses for every act in the suit: stamp paper, chancery fees, and fees to judicial officers.

"5. Judicial expenses vary according to the several degrees of jurisdiction of the courts (*Uffici di Conciliazione*, *Preture*, *Tribunali Civili*, *Corti di Appello*, *Corti di Cassazione*). For instance, before the *Uffici di Conciliazione* the stamp paper to be used costs 0.10, 0.60, 1.20 fr. (exceptionally, 2.40 frs.), according to the nature of acts. Before the *Preture* the stamp paper to be used costs 2.40 frs., and sometimes 3.60 frs. Before the *Tribunali*, *Corti di Appello*, and *Corte di Cassazione*, the stamp paper costs 3.60 frs.

"As regards Chancery fees for copying or authenticating acts, they are generally the same for the different courts (*Uffici di Conciliazione* being excepted). For instance, copy dues to the Chanceries of the *Preture*, *Tribunali*, and *Corti di Appello* are 0.25 fr. for each page of writing.

"As to the fees to be paid to judicial officers, on a summons, for instance, must be paid 0.40 fr. to the officers of the *Conciliazione*, 1.40 fr. to the officers of the *Preture*, 2.10 frs. to the officers of the *Tribunali*, 2.80 frs. to the officers of the *Corti di Appello* or *Corti di Cassazione*, always supposing that for such an act there is only one page of writing, and there is no mileage (allowance for food and

travelling expenses to the officer when he must go more than 2½ kilometres from his residence).

"Registry dues vary also according to several courts. A judgment of a *Conciliatore*, for instance, is not charged with registry dues if its value is not more than 30 frs., but is charged with a tax of 1.20 fr. if the value is from 30 to 50 frs., and with 2 frs. if the value is from 50 to 100 frs., which is the limit of the *Conciliatore's* jurisdiction.

"Judgments of *Preture*, *Tribunali*, and *Corti di Appello* are charged with different registration taxes according to the value, matter, and importance of the suit. Commonly the fees are 2.40 frs. for *Preture*, 3.60 frs. for *Tribunali*, and 7.20 frs. for *Corti di Appello* and *Corti di Cassazione*.

"6. Suitors may be released from the payment of taxes in contentious matter by reason of poverty. In this case they are admitted to the so-called *gratuito patrocinio;* the right to be admitted to this privilege is decided by commissions specially appointed in the *Tribunali*, *Corti di Appello* and *Corti di Cassazione*. These commissions are called *Commissioni di gratuito patrocinio*.

"The expenses incurred in the course of the proceedings are noted on account of the suitor admitted to *gratuito patrocinio*, and in the case of a successful judgment the other suitor must pay them. There is another case in which the payment of judicial expenses is dispensed with; when a State Department (Administration of the Domains, of Taxes, of Customs, etc.) institutes proceedings or is sued. But at the end of the proceedings the unsuccessful suitor, either the State Department or the private person, is bound to pay all the expenses.

"7. The unsuccessful suitor must reimburse the successful one for all expenses, including the *honoraria* of barristers and solicitors.

"8. The State reserves always the right of recovering expenses incurred on account of persons admitted to *gratuito patrocinio*, and is entitled to enforce this right by compulsory means.

"As regards criminal proceedings, the State, in the case of crimes which are prosecuted by the State only (that is, by a public prosecutor) pays in advance the expenses of the proceeding, with the right, in the event of a verdict of guilty, to recover them by compulsory means from the condemned person, if he is able to pay.

"Only in cases of crimes which may be prosecuted by private parties only, or when the person injured acts along with the public prosecutor against the offender, must the expenses be paid in advance by the person acting as prosecutor."

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Before stating the answers to the queries received from Germany, a few explanations as to the civil procedure in that country may be useful. My information on the subject is chiefly derived from the Code of Procedure of 1877, and from Hermann Meyer's book, *Der Prozessgang nach der Civil-Prozessordnung*. Dr. E. J. Schuster, barrister-at-law, who is intimately acquainted with the procedure, both here and in Germany, has been good enough to add some notes, and to aid me with valuable suggestions.

The claim in an action in a Landgericht is made by a statement of claim (*Klageschrift*), which shortly states the nature of the claim, the names of the parties, the grounds of the claim, and the judgment or relief asked for (Code of Procedure, s. 230). For example, "On the 3rd of June, 1877, the plaintiff lent the defendant 600 marks at 5 per cent. Evidence: Frederick Leisten, shoemaker in Hanover, and Ernst Hobel, joiner of the same place," etc. This document (*Klageschrift*)[1] cites the defendant before the Court, which gives a day for the hearing (*Mündliche Verhandlung*). Between the service and the hearing there must be at least a month. Before the expiration of two-thirds of the time for the hearing, the defendant must deliver his written answer (*Klagebeanwortung*), stating shortly the nature of the answer in law or otherwise, and adding, if facts are in dispute, some indication of the proposed evidence. "Evidence: Frederick Meyer, of Hanover, commercial traveller, as witness." Perhaps there is a reply on the part of the plaintiff. On the appointed day the parties appear before the Court. The Court first decides preliminary points of law as to jurisdiction, and, if necessary, gives judgment. If there is any question of fact which cannot be decided, a hearing for the taking of oral evidence is fixed, and the parties again appear. The Court in all cases of importance makes an order as to taking of evidence (see Code of Civil Procedure, ss. 323, 324). If in the case given above the defence asserts that the plaintiff has extended the time for repayment, and that the debt is not due, and the plaintiff denies this at the hearing, the Court may order that evidence as to that issue is to be taken by the examination of A. B., the witness named by the defendant. This evidence (see Code of Civil Procedure, ss. 320, 340) is in certain events (which in practice are very common) not taken by the Court itself (which

[1] "The German statement of claim does not in practice differ much from an English statement of claim, except that the evidence is stated together with each fact that is asserted" (Note by Dr. Schuster).

consists of three judges). If the witness lives in the place where the action is brought, one of the three judges is in such a case appointed to take evidence, as *Beauftragter Richter* (s. 326). If he lives in another place one of the judges of the local Court (*Amtsgericht*) in the district of which the witness lives is ordered to take the evidence as *Ersuchter Richter* (*ibidem*, s. 327). In such cases a further hearing must be fixed.

One characteristic of the procedure is, that a party intending to give proof of any fact must make known beforehand to his adversary the nature of the proof he intends to offer (*Beweismittel*) (Code of Procedure, s. 255). At the first hearing the Court may make an order as to the taking of evidence; but this does not preclude a further order being made for the taking of further evidence at a subsequent hearing. The Court may also deliver a "conditional judgment," imposing an oath on one of the parties as to certain facts, and declaring the consequences in the several events mentioned in the judgment. In such a case no further hearing before the full Court is necessary.

Several statutes regulate legal remuneration and Court fees in Germany. The following are the principal statutes on the subject:—

(*a*) The Civilprozessordnung, 1877.

(*b*) Rechtsanwaltordnung, 1878.

(*c*) Gerichtskostengesetz, 1878, amended by Statute in 1881.

(*d*) Gebührenordnung für Gerichtsvollzieher, 1878, amended by Statute in 1881.

(*e*) Gebührenordnung for witnesses and exp[illegible], 1878.

(*f*) Gebührenordnung für Rechtsanwälte, 1879, amended by Statute in 1890.

Of these the most important are (*c*) and (*f*).

The remuneration of lawyers was carefully examined in 1877, by a commission consisting of judges, advocates, and professors. In 1879, the *Gebührenordnung für Rechtsanwälte*, based on the *Entwurf* of the commission, was passed. It is pointed out in Walter's edition of the "Law as to Legal Remuneration," that a great majority of the members of the commission was in favour of giving a *Rechtsanwalt* power to contract with his client. In the absence of such a contract, there was to be a statutory allowance. This principle is carried out in the statute with this difference—that the contract is not viewed as the general case, and the statutory allowance as merely exceptional, but *vice versâ*. The Act applies (s. 1) to the remuneration of lawyers in proceedings before the ordinary courts as well as for advising. The principle of the measure is that remuneration should vary with the value of the subject-matter of the dispute. The framers of the statute were, of course, aware that this was not a perfect test of the worth of the services

GERMANY. rendered by "barrister-solicitors;" that suits for small amounts might involve much trouble, while suits in which large sums were at stake might be easily conducted; and that, as to some suits, it was impossible to estimate the value of the subject-matter. The legal tariff was adopted as a fair average; and for the last-mentioned suits special provisions were made. The chief section of the statute, s. 9, is as follows:—

"In civil disputes remuneration is based on the value of the subject-matter in dispute in the following manner:—

1.	1 to 20 marks (inclusive)					...	...	...	2 marks.
2.	More than 20 and up to 60					...	...	...	3 marks.
3.	,,	60	,,	120		...	...	...	4 marks.
4.	,,	120	,,	200		...	...	...	7 marks.
5.	,,	200	,,	300		...	...	...	10 marks.
	Etc.			Etc.				Etc,	
18.	,,	8200	,,	10,000		...	...	...	64 marks."

The classification beyond this point rises by 2000 marks, and the remuneration in classes up to 50,000 marks increases by 4 marks, up to 100,000 marks by 3 marks, and thereafter by 2 marks. There are elaborate rules for calculating the value of the subject-matter in dispute (ss. 19 to 39, *Gerichtskostengesetz*), and the Court has large discretion in deciding such questions. Obviously it would be unfair to allow the same amount without regard to the stage at which a case is ended; and in the statute there are provisions, too long to be fully stated here, intended to apportion the costs according to the stage.

The principal fees payable to an advocate are—

I. FEE FOR ACTION (*Prozessgebühr*), the full scale fee. This is a fee for everything not specially provided for by separate fees which the *Rechtsanwalt* does in an action (*Gebührenordnung*, s. 13).

II. FEE FOR HEARING (*Verhandlungsgebühr*).

(*a*) If both parties attend, the full scale fee.

(*b*) If the other side does not attend, half the full scale fee.

This is a fee payable in respect of all attendances in Court, excepting the fees mentioned below.

III. ADDITIONAL FEE FOR HEARING.

(*a*) If both parties attend, half the scale fee.

(*b*) If the other side does not attend, a fourth part of the scale fee.

This is a fee payable in respect of attendance in Court if a further hearing takes place after the taking of evidence.

IV. FEE FOR EVIDENCE (*Beweisgebühr*), half the scale fee. This is a fee payable in respect of attendance at the taking of oaths or of evidence generally.

Advocates entitled to appear before the *Reichsgericht* may charge an additional three-tenths in every case (G.O. p. R.A., s. 52); but, apart

from this, the fees are the same at each stage of the action. No other fees are payable. The charge for copying documents is 10 pfennigs for a page of 20 lines. No fee is payable for the drafting of pleadings. There are also special provisions for certain kinds of proceedings in which despatch is needed; for example, *Urkundenprozess* and *Wechselprozess* (B. 19). The *Rechtsanwalt* receives, in such cases, only six-tenths of the full fees.

One peculiarity of the law is the special fee for settlements which the "solicitor-counsel" has been instrumental in effecting. For such he receives the same fee as for the hearing.

An illustration will help to make clear the working of the measure. Claim for 1100 marks (£55), which is contested. The case goes through all stages; evidence is taken and judgment given; the "counsel-solicitors" for plaintiff will be entitled as follows:—

I.	Fee for action (*Prozessgebühr*) (according to s. 13) ...	28 marks.
II.	Fee for hearing (*Verhandlungsgebühr*), full fee (according to s. 13)	28 ,,
III.	Fee for evidence (*Beweissgebühr*) (five-tenths of full fee)	14 ,,
IV.	Additional fee for hearing (five-tenths of full fee) ...	14 ,,
	Total	84 ,,

In practice far more complicated cases arise, and the best mode of explaining how they are dealt with, is to cite an example from Walter's *Manual*, already mentioned. Claim for 1100 marks (£55). Before the "counsel-solicitor" for the defendant has pleaded, the plaintiff reduces his claim by 400 marks (£20), and defendant admits 40 marks, leaving 660 in dispute, with respect to which "proof is ordered." After evidence is taken, the plaintiff agrees to withdraw the claim for 330, leaving 330 in dispute. This latter sum is the subject of judicial decision in favour of the plaintiff. The remuneration is thus calculated:

	Marks.	Marks.
I. Fee for Action (*Prozessgebühr*).		
(*a*) 400 marks (withdrawn as above, and therefore only five-tenths of the *Prozessgebühr* due according to s. 14)	7.0	
(*b*) 700 (full *Prozessgebühr*)	24.0	
Total	31.0	
But as the full *Prozessgebühr* would be only 28 marks, the above sum is reduced to		28.0
II. Fee for Hearing (*Verhandlungsgebühr*).		
(*a*) As to the 40 marks not in dispute before the Court (according to s. 16, five-tenths)	1.50	
(*b*) Disputed as to 660 (according to s. 13)	24.0	
Total	25.50	

	Marks.	Marks.
Brought forward		28.0
But, inasmuch as the full *Verhandlungsgebühr* on a sum of 700 marks is only 24, the above is reduced to		24.0
III. Fee for Evidence (*Beweissgebühr*), 660 marks disputed, according to s. 13		12.0
IV. Additional Fee for Hearing (*Verhandlungsgebühr*). Not disputed. 330 marks (five-twentieths, according to s. 17)	3.50	
330 disputed, five-tenths	7.0	
		10.50
Total		74.50

By the *Gerichtskostengesetz* the principle regulating the remuneration of the "counsel-solicitor" is applied to Court fees. S. 8 of the statute is as follows: "In civil disputes the Court fees vary with the value of the subject-matter. The full fees vary as follows:—

(1)	1 to 20 marks	fee	1.0 mark.
(2)	More than 20 up to 60	,,	2.40 marks.
(3)	,, 60 ,, 120	,,	4.60 marks.
(4)	,, 120 ,, 200	,,	7.50 marks.
(5)	,, 200 ,, 300	,,	11.0 marks.
	Etc. Etc.	Etc.	
(18)	,, 8200 ,, 10,000	,,	90.0 marks."

S. 10 states that in demands not relating to property or money, the value of the subject-matter is to be taken at 2000 marks (tax, 44 marks). In exceptional cases it may be higher or lower, but it is not to be valued at less than 200 marks or over 50,000.[1]

The regulations as to witnesses and experts are contained in the law of June 30, 1878. The witness gets remuneration from 10 pfennigs to 1 mark for every hour (s. 2). The compensation is to be measured with regard to loss of time in his occupation; no extraordinary allowance is allowed. The *Sachverständige*, or experts, receive compensation based on loss of time up to 2 marks an hour. But in difficult inquiries the expert may be paid according to the value of his services.

On the subject of the expenses of witnesses and Court fees, Dr. Schuster gives the following explanations:—

"(*a*) *As to Court Fees.*—(1) A deposit is paid at each stage by the party making an application in the action. In the case of foreign defendants this deposit is higher. At the end of the action the party ordered to pay the costs has to pay the Court fees of *both parties* (unless, for special reasons, part of the costs are ordered to be paid by the other party), and the other party then withdraws his deposit. (2) If more than a year has elapsed from the beginning of any stage of the action without a decision

[1] There are complaints of the amount of the Court fees ("Immer sind die Gerichtskosten um viele Prozente höher als die Anwaltskosten," *Preussiche Jahrbücher*, 1894, pp. 99, 100). The writer gives instances in which the Court fees were 122 marks, 420 marks, and 33 marks, as against 108 marks, 252 marks, and 30 marks the remuneration of the lawyers concerned.

as to costs, the party on whose application the stage of the action was commenced has to pay the Court fees at the end of each year. (This means that in the Court of First Instance the plaintiff, and in the other instances the appellant, has to pay these costs.) (3) If any stage of the action is concluded without an order as to costs, the plaintiff or appellant, as the case may be, has to pay the costs up to the date of the order concluding the stage. This may happen in the event of the Reichsgericht referring an order of the Court of Appeal to the Court of Appeal for new trial, and ordering that the costs of the appeal to the Reichsgericht are to be decided on at such new trial. In such cases, and also in cases where the higher Court overrules the judgment of a lower Court, it may happen that the ultimately successful party has to recover Court fees from the ultimately unsuccessful party. (*b*) *As to fees and expenses of witnesses and experts.* These are in the first instance paid out of public funds, unless a special deposit is ordered; and the party ordered by the judgment to pay the costs has to refund them (see notes to Code of Civil Procedure, ss. 366, 378, in Seuffert, pp. 476, 487, and *Struckmann v. Koch*, pp. 424, 436). (*c*) *As to fees and expenses of lawyers and process-servers.* These are the only expenses which each party pays in the first instance. The result is that a successful litigant has to pay *no* Court fees, *no* witnesses, and *no* experts, beyond the deposited amounts, even if his opponent be insolvent."

The following answers to the queries are by Senator Hertz, of Hamburg:—

I.—Advocates' Fees.

"1. Lawyers' fees are regulated by the above-mentioned statutes. Remuneration in excess of the legal scale cannot be claimed unless there is a contract in writing. Such contracts are not rare in complicated matters. In many places—for example, in Hamburg—lawyers rely, in the case of good clients, that an extra *honorarium* will be paid without a contract.

[Another correspondent states that contracts varying the legal rate of remuneration are rare.]

"2. Fees depend, in the first place, on the value of the subject of dispute; also whether the defendant contests the claim; whether the Court has given a decision; whether a settlement has been arrived at; and whether evidence has been taken. Except as above stated, the amount of the remuneration is not affected by the stage at which the proceedings end. There are no special statutory provisions for the cases mentioned in the question.

[Another correspondent remarks that, as to special cases, the "barrister-solicitor" may enter into a special agreement, upon which, if in writing, he can recover.]

"3. The successful suitor is entitled to the legal costs from the unsuccessful party, and in case of partial success the costs are divided. The unsuccessful party pays the fees (as fixed by the scale) of the other party's *Rechtsanwalt*, as well as the Court fees.

[S. 87 of the Code of Procedure states that the unsuccessful party

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"4. A lawyer is not entitled to be paid by his client any excess over and above the sum allowed as against the unsuccessful party, in the absence of a contract in writing.

"5. There is a scale of charges for witnesses and experts.

"6. There is a distinction between the fees in civil and criminal matters. For proceedings before the *Reichsgericht* the fees are three-tenths higher than fees in the courts below.

"7. A *Rechtsanwalt* is bound by law to give a detailed statement of his charges and expenses.

"8. Agreements making the remuneration depend on the result of litigation are not legally forbidden. But among lawyers of good standing they are regarded as inadmissible.

[Another correspondent, while writing to much the same effect as the above, refers to s. 84 of the law as to legal remuneration, which states that a lawyer may require a reasonable advance from his client. The same correspondent also cites s. 93, which states that a lawyer may enter into a contract as to remuneration, but that the Court may reduce the amount, if excessive.]

"9. There are very great differences in this respect. The *Rechtsanwalt* may legally insist upon an advance. In Hamburg this is not done in the case of well-known clients.

"11. (*a*) 1000 to 1200 marks (£50 to £60) the total.

"About 500 marks (£20) Court fees; the rest lawyers' fees, including out-of-pocket expenses. Each party pays half.

[Another correspondent puts the total costs at £45.]

"(*b*) Costs very different according as the claim is prosecuted before the Civil or Criminal Courts, and according to the amount of compensation claimed by the plaintiff.

[Another correspondent remarks that in the case mentioned in the queries, the costs would be borne by the unsuccessful party, and would, according to the legal rate, amount to about £6. In the so-called private cases before a Strafgericht lawyers usually made an agreement with their clients for a special fee of about £2 to £5.]

"(*c*) The answer depends mainly on the value of the goods. In the event of the claim being for 10,000 marks (£500), the plaintiff would pay the total costs, amounting to about £20.

II.—Court Fees.

"1. There are Court fees.

"2. The amount of the Court fees depends on statutory regulations and the judgment or order of the Court (see above).

"3. The amount of the Court fees depends on the value of the subject of dispute in civil causes, and, in criminal matters, on the amount of the punishment.

"4. Some portion of the Court fees must be deposited beforehand. But the prosecution of the suit is dependent on their payment only in the case of the plaintiff being a foreigner.

"5. In the Courts of Second and Third Instance the Court fees are one-fourth to one-half higher.

"6. Court fees are remitted in the event of the party ordered to pay them satisfying the Court that he cannot pay them."

The following is a specimen of a bill of costs kindly sent by Herr Regierungsrath Kordemann, of Metz:—

I.

BILL OF COSTS OF PLAINTIFF'S ADVOCATE.

(In an action in favour of the plaintiffs.
The value of the subject-matter of the action was between 600 to 900 marks.)

In the Imperial Provincial Court, Metz. (1)

Statement of Costs

In the matter of *H.* v. *Y.*

FIRST INSTANCE.

	Marks.
1. Statement of claim with two schedules (2 × 7 = 14 pages)	1.40
2. Fee for action (see ss. 9 and 13 of statute regulating advocates' fee)	24.00
3. Service of statement of claim	0.90
4. Pleading dated 28.3.94	0.40
5. Fee for hearing	24.00
6. Order as to evidence, dated 6.4.94.	0.20
7. Order as to evidence, dated 27.4.94	0.40
8. Pleading, dated 12.4.94	0.60
9. Fee for evidence	12.00
10. Fee for final hearing	12.00
11. Engrossment of judgment	0.80
12. Copy of judgment	0.80
13. Service of judgment	0.65
14. Postages and copying	2.50

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SECOND INSTANCE.

		Marks.
15.	Fee for action	24.00
16.	Fee for hearing	24.00
17.	Fee for evidence	12.00
18.	Additional fee for hearing	12.00
19.	Pleading in answer to appellant's case and service thereof	0.95
20.	Applications	0.40
21.	Copy of judgment, dated 19.12.94 (2)	1.10
22.	Service of the same	0.65
23.	Copy of judgment, dated 6.3.95	0.40
24.	Service of the same	0.65
25.	Postages and correspondence	2.20
26.	Fee for action, five-tenths (3)	12.00
27.	Fee for taking of evidence, five-tenths	12.00
28.	Journey to Diedenhofen to appear on the taking of the oath	26.84
29.	Petition to tax costs	3.00
30.	Two copies of the same	0.40
	Total	213.24
	Less struck off ...	6.00
		207.24

NOTES.[1]

(1) In this case the *Landgericht* in Metz was the Court of First Instance, and the *Oberlandesgericht* in Colmar was the Court of Second Instance. The bill of costs includes the fees of the advocate who represented the plaintiff before the Court of Appeal. The taxation of all costs is always taken in the Court of First Instance.

(2) This was probably an interlocutory judgment.

(3) Items Nos. 26, 27, and 28 seem to be the costs of another advocate who represented the plaintiff at the taking of an oath at Diedenhofen. An advocate, whose functions in an action do not extend beyond his attendance at the taking of an oath or the taking of evidence generally, is entitled to half the "fee for action," and is entitled to the "fee for evidence" to the same extent as the advocate who generally represents the party at that stage of the proceedings.

AUSTRIA.

As to Austria, answers have been received from Dr. von Ernst, Rechtsanwalt, Vienna.

"The reply to the questions submitted by the Society of Comparative Legislation is affected in Austria by two considerations: (1) by the totally different position of the lawyer according to Austrian law as compared with the state of things in England; (2) by the circumstance

[1] There was a difficulty in translating the above bill of costs into English equivalents. The translation and notes are by Dr. Schuster.

that the existing regulations, including the method of procedure in law-suits, are about to disappear. On January 1, 1898, the laws of August 1, 1895, relating to the jurisdiction and competency of the ordinary Courts in legal proceedings, and No. 59 as to legal procedure in suits, will come into force.

"At the outset it must be understood that the system of dividing lawyers into two distinct groups, as is the case in England, does not exist in this country.

"According to s. 8 of the law of July 6, 1868, the right of every lawyer to plead extends to all Courts and before all proper authorities. The designation of *Hofundgerichts Advocaten* usually adopted by lawyers practising in Vienna, Linz, and Graz, where the sittings of the highest Courts are held, in contrast to 'country advocates,' has only a historical meaning, inasmuch as all advocates have now the right to plead before all Courts of law, including the highest Imperial Courts. A division of legal work between so-called 'barristers' and 'solicitors' is unknown to Austrian law. Neither in practice has any such difference ever arisen.

"The ordinary procedure is a written and indirect one, carried on only by written documents, upon consideration of which the Court gives its judgment, also in writing and not in open Court.

"The advocates, under the new laws, will have equally the right and authority to plead before all the Courts. In order to exercise the profession of an advocate, a suitable educational qualification is required; viz. to be a doctor of laws, to have practised one year before a Court of law, six years as assistant to an advocate, and to have passed an advocate's law examination.

"It is impossible at present to say whether under the new system there will be a division of the legal profession into those concerned with the earlier stages of litigation, and others who, gifted with capacity of speech, plead for the parties. At present no such difference exists.

"Owing to the new rules of procedure, as already mentioned, there must be a separate reply as regards the present and as regards the future. I will first answer as to the law now in force and the usual practice; I will next endeavour to answer as to the new laws, although that can be done only more or less hypothetically, inasmuch as there is as yet no practice under them, and many of the details remain for the consideration of the Legislatures, or have not as yet been laid before them by the Government.

"The first reply deals with the old law, and the second with the new regulations.

AUSTRIA.

I.—Legal Remuneration.

"1. A distinction must be drawn between the so-called *Currentien* (simple actions, proceedings for execution, etc.) and the *prozess-schriften*. For the first a scale, subject to the right of contracting, has been issued, sanctioned by the law of March 26, 1890, and by a Decree of the Ministry of Justice, dated June 25, 1890. The fees for the second are left to be settled by agreement. In practice no amount is agreed upon beforehand. The advocate fixes his fees according to his discretion. Should the client, however, think them too high, both parties have the right to apply to the committee of the Chamber of Advocates for an amicable adjustment of their differences (s. 19 of the Regulations for Advocates).

"Generally, however, this course is not adopted. But an application is made direct to the judge before whom the case was disposed of, and he fixes the costs after hearing the parties. The advocate has, moreover, the right at any time to stipulate for a fixed sum; in such case of course no legal decision is required.

"The advocate can, however, in no case stipulate either for the whole or part of the subject-matter of dispute, or obtain either a total or partial assignment of it. Agreements for a fixed sum are not very common, and only in the case of very important suits.

"According to the new laws of procedure, the Court, in fixing the amount of the costs, has to determine the amount, so far as the matter is not fixed by the scale, after taking all the circumstances into consideration, to the best of its judgment. The settling of details is, however, reserved for special laws which have not as yet been submitted by Government.

"At the tenth meeting of the Austrian *Advokatentag*, held last autumn in Vienna, the question of legal remuneration was discussed. One party was in favour of the adoption of a scale; another declared in favour of freedom of contract. Finally the following resolutions were passed:—

"'(*a*) The *Advokatentag* adheres to the principle laid down by the Order of Advocates of freedom of contract as regards remuneration.

"'(*b*) As regards the obligation of the party who fails in an action to make compensation for costs, a scale for contentious proceedings should come into operation at the same time as the new regulations for civil procedure. With regard to the advocate of such party, the scale should lay down the *minimum* amount of remuneration, without prejudice to the right of the advocate to claim eventually a larger fee from his client in the usual manner.

"'(*c*) The scale should be a scale based on value, arranged on a system of "grouping," with a fixed rate for each group or class.

"'(*d*) For *Currentien* (simple actions, etc.) the present scale should remain as it is, with the modification in practice that the maximum charges in the same should be removed, and that the progressive rate based on the principles contained in this scale, should advance without limit of value.'

"The Government has not yet declared itself on this subject, but waits for the scale to be arranged by the 'Commission of Advocates,' in order, probably, thereafter to fix, as is usual, without particular consideration for the proposals made by the advocates, the scale of charges and the mode of applying them.

"2. The amount of the matter in dispute is of course taken into consideration in fixing costs, whether this be done by the advocates themselves, or whether the Court fixes the amount thereof. The importance likewise of the suit is also taken into consideration.

"With regard to the new laws of procedure (see above), according to the law of May 16, 1874, the party who fails in a suit has in all cases to refund to the other party all the costs necessarily incurred for the purpose of effectually prosecuting or defending an action. The judge has to fix such costs after careful consideration of all the circumstances, the place of trial, the adjournments and delays which he may consider to have been justifiable. If each suitor partly succeeds or loses, costs are to be divided *pro rata*, or each party bears his own costs. In this case it may happen that one party is ordered to pay all the costs, while the other party whose claim has not occasioned any particular costs is only ordered to pay a relatively small part thereof.

"One cannot say that the successful party is indemnified for *all* the costs and disbursements in a suit. Indemnity is given only so far as regards the *necessary* disbursements. As a rule the costs and expenses are determined by the Court in such a way that in many instances success in an action for the recovery of more costs could not be expected. The parties themselves are never compensated for loss of time.

"The new civil procedure very closely adheres to the mode of fixing legal charges contained in the old laws. In the event of a party having engaged several advocates to represent him in a suit, he is only entitled to compensation for costs in so far as they do not exceed the costs of one advocate, or if a change in the person of the advocate takes place.

"There is a new provision to the effect that a party who succeeds can be ordered to pay the costs in the event of their having been occasioned by delay in producing documents.

"The payment of the costs of an action may fall upon the advocate, in so far as they have been caused by gross negligence on his part.

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"The Court has even the right to order the advocate to pay all the costs, if through gross negligence on his part he advises an action which is absolutely untenable.

"The order as to costs follows immediately upon the judgment in the case.

"3. With regard to the extent of the reimbursement of costs under the new civil procedure, I refer to what has been said above in I. 2.

"4 and 5. This right is implied in the principle of freedom of contract. In an exceptional case the successful party may have to pay all his advocate's costs.

"5. (*a*) *Witnesses.*—A witness resident in the place where the examination of witnesses takes place can claim a fee only if he be a workingman; *i.e.* if he is earning daily wages—in which case he is entitled to compensation for loss of time, the amount to be at the discretion of the judge. Should the witness, however, not reside in the place where the Court is held, he is entitled to conduct money and his expenses of maintenance; all this at the discretion of the judge. The fees of witnesses are fixed extremely low.

"According to the new law (*a*) any witness can claim compensation for necessary expenses for travelling to the place where the examination takes place, for maintenance there, and likewise for the expenses of returning.

"For loss of time compensation can be claimed only when the witness has lost a considerable portion of his daily work. Witnesses receive compensation on the basis of a scale of charges. They are fixed by the Court.

"The scales of charges have not as yet been submitted to the legal authorities of the Government.

"(*b*) *Experts.*—The charges of experts are fixed by the Courts receiving the evidence. The Courts have to take into consideration not only whether the time charged for has been stated truly, but also the knowledge and the experience, place of residence of the experts, and the circumstances of the parties (law of December 17, 1830).

"According to the new law of procedure a lawyer has a right to be compensated for any costs and disbursements which he has incurred, also for loss of time, and payment for his trouble; and he can ask for a proper payment in advance. The determination of his charge is made at the same time as the sums due for witnesses.

"6. In civil actions no difference is usually made as to the rank of the Court of Procedure. With regard to criminal proceedings the fees of the lawyer are generally fixed by agreement. In this case

the fees are generally higher in proceedings before the Court of Cassation than in the District Courts. But it is not possible to lay down any fixed rule. The nature and difficulties of the proceedings and the financial position of the party are taken into account, and the amount of the advocate's charges are proportioned thereto. Should no arrangement be made, the party or his legal representative can, in the case of criminal prosecutions, get the same fixed by the Courts of First Instance. In prosecutions for private offences (loss of honour, insult, etc.) the defeated party pays the costs. The State, even in the event of an acquittal, does not pay the defendant's costs.

"Costs in criminal cases are regulated by the Austrian Code of Criminal Procedure (1873).

"7. The law does not require detailed bills of costs to be delivered. This, however, is usually done if no sum has been distinctly agreed upon.

"8. Such an agreement as to costs is not invalid if it is not made under such circumstances as are contrary to the dignity of the advocate's position. Should this be the case, the advocate may be censured or punished by the Council of Discipline of the Chamber of Advocates. This rarely happens in the case of advocates of good standing.

"9. The query cannot be answered in a general way: The reply depends upon the question whether the retainer is for a fixed period or only temporary, whether the party is known to be worthy of credit, and, lastly, whether the advocate is in a position to pay the expenses of a suit, which not unfrequently are very considerable. The practice in this matter varies much.

"10. Yes. Only, however, in 'ordinary proceedings' (where the matter in dispute exceeds the sum of 500 florins).

"If the Court orders security to be given for a fixed amount, the defendant is not bound to plead until the plaintiff has given the security, or sworn that he is unable to obtain it. Security cannot be claimed in executory proceedings upon bills of exchange, leases, assignments, small debts, or matrimonial disputes, etc. So, too, one who pleads *in formâ pauperis* is exempt from finding security.

"According to s. 57 of the new law of procedure security can be asked from an alien plaintiff, unless according to the laws of the State to which the alien belongs, Austrian subjects are exempt from giving such security; or unless the plaintiff possesses sufficient property within the jurisdiction of the Court.

"Security cannot be claimed in matrimonial actions or in actions relating to assignments, bills of exchange, counter claims, etc. Otherwise, the provisions of the old procedure have been retained.

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"11. After the preceding explanations as to costs, to cite examples cannot be of much use.

"The immense variety of circumstances and incidents arising in a suit render it impossible to take any one case as a precedent. There are suits in which the costs are considerably higher than the amount of the claim. Other suits for very large amounts can be carried on, provided no difficulties arise in the course thereof, at comparatively very little cost. The intellectual and physical exertion of the advocate generally determines his fee. The amount of the matter in dispute, the financial position of the party, the importance of the suit, etc., are elements to be considered.

II.—Court Fees.

"1. Yes, stamp duties and fees for judgments, which are to a certain amount likewise paid in stamps.

"2. The stamp duties are paid by stamps affixed to plaints, petitions, etc., presented by the parties. Should this not be done, or the duty paid be insufficient, the Courts where such plaints or petitions have been lodged, notify the fact to the Revenue authorities, who then demand an increased duty from the party. In the case of charges for judgments which are not paid by adhesive stamps, and particularly if the value of the matter in dispute exceeds 800 florins, the judgment is transmitted to the Revenue authorities, who collect the duties from the parties.

"3. There is a difference between the fixed fees and the fee upon a judgment. The first can only be paid by affixing stamps to the documents, and each legal document or record requires a 36 kreuzer stamp. Should such legal document or record comprise several sheets, each sheet requires a stamp. Each *annexe* (exhibit) must have a 15 kreuzer stamp.

"There is an exception to this mode of proceeding in unimportant cases (where the value of the matter in dispute does not exceed the sum of 50 florins). The duty upon judgments is regulated by the amount of the matter in dispute. These fees must be paid, as already explained, in stamps by the litigants, each paying one half thereof as his share.

"The payment is made by affixing stamps to each document in the case.

"4. This question has already been answered under heading 3.

"5. Yes. In appeals against interlocutory judgments one half of these fees are payable.

"6. Only in case the party is entitled to sue or defend as a pauper (*Armenrechten*) is he exempt from payment of the fees.

"7. These fees are always included in the costs of the successful party when he has an order for costs.

"8. The Court cannot refuse to try a case because the fees have not been paid, or the documents relating thereto have not been duly stamped. The consequence of such an omission is only that the Revenue imposes a higher duty upon the party, and eventually recovers the same by execution. Lastly, it must be observed that the Court fees to which I have referred are simply State fees, the proceeds of which go into the Public Treasury. These fees have nothing whatever to do with the remuneration of the Court officials, etc., whose salary is provided for out of the Government Budget.

"The framing of the new civil procedure naturally requires a re-arrangement of the Court fees. This, however, is still incomplete, and the proposals on the subjects will presumably only be laid before Parliament in the next legislative session."[1]

HUNGARY.

The following observations are by Dr. Herezegh, Professor of Civil Law, Buda-Pest:—

"Before returning the desired answers[2] to the questions enclosed, I have the honour to remark, in the first instance, that in our country the separative system does not exist in regard to the legal profession, as in England and France, but the system which is in use in Germany, Italy, and Austria, where the position of the *avoué* includes the function of the *avocat*. This function extends to the representation of parties and to pleadings *vivâ voce* in Court.

"I.—Costs in General.

"According to our laws the costs (*expensæ*) are of two sorts: judicial and extra-judicial. The former arise from acts of the judge, the latter from acts of the parties.

"To judicial costs belong stamp duties, fees, and all expenses due to delegated magistrates (notary, executionary officer) in their official journeys. On the other hand, to the extra-judicial costs belong the

[1] It has been found necessary from want of space to omit some details given in Dr. Von Ernst's answers.

[2] These have unfortunately not been received.

HUNGARY. fees for attendance of representatives (attorneys, advocates), charges of witnesses, experts, interpreters, translators, *diurna*, conveyance, compensations for loss of time, remittance of subject-matter of suit, or journeys of the parties or their attorneys.

"Executionary expenses are not treated as costs. Hence, these have to be borne by the unsuccessful party, even if he be relieved from paying costs.

"If the defendants are more than one, they pay costs either equally, or *pro ratâ*, or *in solidum*, according as the question relates to liability *in solidum*, *pro ratâ* or otherwise.

"The purpose of recovery of costs is to deter parties from groundless litigation. Groundless suits hinder tribunals from thorough settlement of meritorious causes. Hence the obligations of the plaintiff to pay costs cannot arise where process is legitimate.

"In order that the unsuccessful party may be bound to pay costs, it is necessary that they be claimed for and estimated. Such claim must be delivered by the plaintiff in his declaration, and by the defendant in his plea.

"The Court is entitled, for reasons of importance, to excuse the parties from paying full costs, and may require each to pay his own, if the party succeeded only partially, or, though totally unsuccessful, could yet evidently aver all his allegations, and failed only by accident; for example, by the death of his witness. Further, in suits of succession, or between father and child, or suits which the plaintiff entered not out of a spirit of litigiousness.

"In the costs are included fees of attorneys, too, which are to be determined with regard to the labour involved for both of the parties.

"In fixing the fees of attorneys, the Court has regard not to the number of sheets in pleadings, or to the number of days of appearance, but to the services really rendered, the labour of the attorney involved in preparing the case, in procuring necessary evidence, the skill, study, and diligence shown in Court, and to the question whether the attorney observes statutes concerning the manner of administering justice.

"II.—SPECIAL ENACTMENTS WITH RESPECT TO COSTS.

"The unsuccessful party is generally compelled to pay costs, if they are claimed and fixed during the proceedings.

"It is within the discretion of the judge to allow costs to the plaintiff, though he be not successful in his whole demand. It depends upon the judge's opinion, too, whether the costs shall be, according to

the circumstances of the suit, mutually borne or proportionally divided (Act 54, of the year 1868, s. 251).

"Fees of attorneys are included in costs (Act 54, 1868, s. 252. Same dispositions by Act 22, 1877, ss. 25, 35, 36; Act 34, 1874, ss. 54, 55; Act 60, 1881, s. 98).

"The tribunal has to determine in the judgment terminating proceedings in Court, as well as in the partial judgment passed in respect to the plaintiff's claim or the defendant's counter-claim, how costs are to be borne.

"The amount of costs, exclusively of Court fees, eventually payable must be stated precisely in the judgment.

"As to fees of attorneys from their own clients, Act 54, 1868, s. 252, is to be applied (1893, 18, s. 108).

"The unsuccessful party is compelled to pay the successful party's costs, except those which the tribunal thinks unnecessary for defence, or for the suitable vindication of the claim.

"In the former are included expenses and fees of attorneys. In case an attorney residing out of the tribunal's jurisdiction has been instructed, any excess of costs arising from the matter are payable only if the tribunal find this mandate necessary for the suitable administration of the cause (18, 1893, s. 109).

"If a party be partially successful, partially unsuccessful, costs are apportioned. Nevertheless, the tribunal can compel a party, according to the nature of the case, to bear the full costs or a part of his opponent's costs.

"If the defendant gave no occasion for the suit and was not guilty of negligence, the plaintiff has to pay full costs (18, 1893, s. 111).

"Several plaintiffs interested in the same suit are liable *in solidum* for costs. Defendants who are partners are liable in equal rates for costs of procedure, inasmuch as they are not liable *in solidum*. In case of considerable difference of participation of profits the tribunal is authorized to divide costs in proportion to such participation.

"The party using unsuccessfully certain documents, if the tribunal judge them not to be used with sufficient reason, may be compelled to pay the costs caused thereby, though he be successful in the principal matter (18, 1893, s. 113).

"The party missing a legal term, or causing delay by negligence or guilt, has to pay in any case costs arising therefrom (18, 1893, s. 114).

"The plaintiff, if a foreigner, is bound, in consequence of the

HUNGARY. defendant's demand, to give security for securing costs and judgment-tax. Security cannot be claimed—

"(1) If in the State to which the plaintiff as citizen belongs. Hungarians are excused in a similar case from giving security.

"(2) In case of claims or counter-claims entered by virtue of a judicial writ (18, 1893, s. 9).

"The defendant is entitled to security, too, if the plaintiff during the procedure cease to be a Hungarian citizen, unless the admitted part of the plaintiff's claim be sufficient for securing costs (18, 1893, s. 10).

"The amount of security is fixed by the tribunal according to the probable amount of the defendant's costs. In fixing this costs arising from a counter-claim are not considered. If the amount fixed appear during the procedure insufficient, and the admitted part of the claim would not cover the costs, the defendant is entitled to demand further security (18, 1893, s. 11).

"The security, unless parties agree in respect to the manner of security, is to be in cash or negotiable paper. The latter is taken at two-thirds of the price the day before the deposit at the Exchange at Buda-Pest, but never over the nominal value" (18, 1893, s. 12).

SWITZERLAND.

From Dr. Gustav König, Advocate, Berne, have been received, through Dr. Schuster, answers as to the practice in Switzerland. The following is a summary of the answers so far as they relate to the Canton of Berne:—

I.—Legal Remuneration.

1. The remuneration of lawyers in the cases stated is regulated by the law of Civil Procedure of April 18, 1850, as modified by the Federal law for the recovery of debts. Agreements varying the legal rates are rare.

2. The remuneration depends on the value of the subject-matter in dispute. But the lawyer (*anwalt*) can make a special agreement with his own client to provide for the cases referred to; he may do so by increasing the charges for *actenstudium*, which are not within the law above mentioned.

3. The judgment determines what party has to pay the costs and how

much. The Court often fixes the costs so high that the successful party is compensated for all costs and outlays.

4. The *anwalt* can, in the case put, recover from his client the excess over and above the allowed costs.

5. There is no fixed scale of charges for witnesses. The judge determines the amount according to his discretion. Experts usually claim for qualifying, and the charges are fixed by the Court.

6. There is a distinction such as that suggested by the question. In criminal matters the allowances for witnesses are fixed by law.

7. The client is entitled to a detailed account from the lawyer. It is generally only a short statement or account. The client can, within thirty days after receipt of the bill of costs or statement, have it taxed by the Court.

8. Such an agreement (*pactum de quotâ litis*) is not customary, and would not be regarded as valid.

9. It is customary to do as is suggested. Each party must pay in advance the Court fees, and costs of witnesses or experts. The *anwalt* advances these; but in important suits he will require an advance from his client.

10. The plaintiff must give security for costs in certain cases; *e.g.* if he is not domiciled in the canton.

11. No estimate of the costs in the cases stated is possible.

II.—Court Fees.

Court fees are payable according to the scale of May 4, 1882, and are recoverable from the unsuccessful party.

3. The fees vary according to the rank and grade of the Courts.

4. The fees are paid at each stage of the proceedings.

5. The fees are higher in the Superior Courts.

6. Parties are absolved from paying such fees only if they are allowed to plead *in formâ pauperis.*

7. As already stated, such fees are recoverable.

8. No security is required, since fees are paid beforehand.

In a note as to the costs in the Canton of Geneva, Dr. König states that costs include—(1) the *droit du fisc;* (2) the emoluments of the *greffiers, huissiers,* and the *avocats*; (3) the expenses of witnesses, experts, etc.; (4) travelling expenses incurred for the purpose of the trial. By emoluments of the *avocats* are meant such as the scale allows the successful party. These emoluments are very small. [After stating the amount allowed in cases under £10, and in cases of £10 to £20, and £20 and above, Dr. König proceeds,] "It may be said that according to

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the scale the emoluments of *avocats* are not included in the costs. The scale consequently does not regulate the real relations between *avocat* and client." In some of the cantons the remuneration is still smaller than in Geneva. Thus in Tessin the scale for consultations is—1 hour, 3 francs; 2 hours, 5 francs; longer time, 7 francs. An *examen de pièces* of 12 pages costs 2 francs. The expenses include only: (1) Court fees, (2) expenses as defined by the scale (witnesses, instructions, etc.). Intellectual labour expended on the case is not taken into account. The successful party must bear at least three-quarters of the costs and the *honoraria* of his avocat. In the Canton de Vaud is a peculiar rule as to the *honoraria* of the *avocats* included in the costs. "The total amount of the *honoraria* of the *avocats* which one party can be required to pay to the adverse party must not exceed one-fifth of the capital involved in the suit; if there is a dispute as to the value, it is fixed by the *juge moderateur*."

SPAIN.

The following answers have been sent by Señor Magin Fabrega, of Barcelona:—

"First of all I shall make a few general observations, and then reply specifically to each question. To form an estimate of legal expenses in Spain, one must distinguish between the different functionaries who enter into the cases. They are of three classes: the judges and magistrates, the assistants and subordinates of the courts and tribunals, and the assistants of the administration of justice in general. The judges and magistrates have a salary from the State; the litigants do not remunerate them directly, but pay the State by the use of stamps and stamped paper, the value of which is generally proportionate to the importance of the suit. Only the municipal judges, who form the lowest grade of the service of the law, and attend to minor business, have no salary from the State, and charge the litigants direct, subject to the judicial tariffs approved by Royal Decree of December 4, 1883.

"The assistants in the courts and tribunals, who are called *Secretarios* (secretaries or clerks) in the Municipal Courts, *Escribanos de Actuaciones* (clerks of proceedings) in the Courts of First Instance, and *Secretarios de Sala* and *Officiales de Sala* (clerks and officials of the Court) in the High and Supreme Courts, all charge according to the above-mentioned tariffs. The same is the case with the subordinates,

who are called *Alguaciles*, in all the courts and tribunals. I call advocates and solicitors and experts assistants of the administration of justice.

"The advocates charge *fees* without being subject to any scale; the solicitors and experts charge *fees* subject to a scale; to the solicitors the scales apply; for the experts there are different tariffs according to their various professions. After these observations of a general character, I proceed to answer one by one the questions asked.

I.—Legal Remuneration.

"1. As I have said, the advocate's fees are not subject to a scale, but the charges of municipal judges, assistants, and subordinates of the courts and tribunals, solicitors, and experts are so.

"Although the fees of advocates are not subject to scale, they are to a certain extent regulated by custom, and can be disputed as excessive; in this case the judge or tribunal regulates them after examination by the governing body of the Faculty of Advocates, whose function it is to watch over professional honour (Arts. 427 and 428 of the Civil Law).

"The law does not allow the scales to be varied by special contracts.

"2. The fees of advocates naturally vary according to the importance, difficulty, and duration of the suits; there being no fixed rules. As to the duties of the functionaries who charge according to scale, they mainly depend on the duration of the suits, the number of proceedings, and the class of court or tribunal before which they take place. The amount for which the suits are brought also has influence, as the duties diminish when the value of what is in litigation is very small. (Arts. 345 and following of the judicial tariffs.)

"3. As a general rule the party that gains the suit does not on that account have a right to make the loser pay the expenses. He has only this right when there is an order to pay costs expressed in the judgment; this happens when the defeated party has litigated with temerity; but the order to pay costs is presumed in certain cases which, from their simplicity and clearness, do not leave any room for doubt (executive judgments, ejectments, injunctions, etc.).

"When there is an order to pay costs, if the defendant does not duly pay them, an appraisement is made by the clerk or actuary; the parties are heard; and it is approved or rectified by the Court or Tribunal. The order for costs does not free the successful party from payment of costs or expenses caused at his instance; it only gives him a right against the defeated one.

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"4. Solicitors cannot charge their clients a sum greater than that fixed by the tariff. As to advocates, it is not regular for them to charge for the items included in the valuation an amount larger than that fixed in the same; but there is nothing to prevent the advocate from charging his client for work not included in the valuation, such as meetings, conferences, measures, etc., since in the valuation only the work shown in the pleading can figure.

"5. There is not any tariff existing as to the remuneration of witnesses. Remuneration is only given to those who ask for it when making their declaration, and is fixed by the judge or Court according to the personal circumstances of the witness, his profession being specially taken into account.

"6. The fees of the advocates, and still more the charges of the functionaries subject to scale, are influenced by the difference of jurisdictions, and especially the class of the tribunals, increasing of course in the higher.

"7. Advocates, solicitors, assistants, and subordinates of the courts and tribunals must give details of their accounts. Solicitors and assistants of the courts and tribunals are also obliged to put their charges in figures under their signatures in every deed or document (Art. 358 of the Tariffs).

"8. The law forbids the agreement called *quota litis*, by which the advocate receives a share of what may be obtained in the suit. There is no express prohibition as to an agreement not to charge if nothing is obtained in the suit; but in practice this is considered as equal to the preceding agreement. An agreement not to charge fees if nothing is obtained in the suit would only be considered not reprehensible when the litigant, through want of means, was unable to pay the fees.

"9. The law imposes on solicitors the duty of paying all the expenses that may be caused at their instance, including fees of the advocates (Art. 5 of the Civil Law), although, as a rule, the latter do not strictly demand the fulfilment of the legal rule.

"In return the solicitors have a right to demand funds from their clients from the beginning of the case (Art. 7 of the said law); but they also do not generally make use of this right unless in the case of a client who does not inspire them with confidence. Accounts are as a rule presented half-yearly, or at the end of the suit.

"10. *Judicatum solvi* security is only asked from foreigners when in the country they belong to it is asked from Spaniards. It is not required from natives nor from foreigners belonging to a country in which it is not demanded from Spaniards, or in which there is no

jurisprudence on the matter. As may be seen, the principle of reciprocity is applied (Art. 534 of the Law of Civil Procedure).

"11. It is impossible to fix the expenses of the suits indicated, on account of the difference of procedure; but if the procedure set forth in the questions were followed in Spain, the expenses of each party would not exceed 300 to 400 francs for case (*a*), from 500 to 600 for case (*b*), and from 150 to 200 in case (*c*). It must be here observed that there is a wide difference according to the localities.

"Besides, it is very rare in Spain for two advocates to appear for one party; but on the other hand, in return the procedure is more complicated and the expenses heavier.

II.—Court Fees.

"1. As a general rule neither the judges nor the tribunals charge fees in Spain. Only the municipal judges charge fees according to tariff (Arts. 1 to 20, Judicial Scale). The other judges and magistrates receive salaries from the State (Art. 213 and following of the organic law of the Judicial Power, and Art. 12 of the additional law to the foregoing). On the other hand, litigants must use stamped paper; thus contributing in a special manner to the expenses occasioned by the administration of justice (Art. 248 Civil Law and Stamps Act). The assistants and subordinates of the courts and tribunals also charge according to the scale.

"2 and 3. In the Municipal Courts the fees are fixed by the scales without taking into account the importance of the case, as only the less important appear before such courts.

"4. In the Municipal Courts they are paid as they become due. The assistants and subordinates of the other tribunals collect the fees periodically, and frequently.

"5. The fees of the assistants and subordinates are heavier in the Superior Courts than in the lower.

"6. Only those who obtain permission to sue *in formâ pauperis*, which is allowed to those whose means of living are not more than the double pay of a day-labourer in the locality in which they reside, are exempt from payment of fees and from stamps (Art. 15, Civil Law).

"7. As has been said, he who gains the suit only recovers the expenses incurred when his adversary is expressly ordered to pay costs.

"8. The State has the guarantee that the litigant will not fail to use the proper stamped paper, as his documents would not otherwise be admitted. As to the assistants and subordinates of the courts and tribunals, they have the guarantee of the solicitor, who is obliged to

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pay for his client. The solicitor, before entering on the duties of his profession, must give security, the amount of which varies according to the Court in which he practises; this security is intended to cover the liabilities which the solicitor contracts in the discharge of the duties of his office.

"On the other hand, as I have said, they have a right to ask their clients for funds."

CANADA.

ONTARIO.

The following answers are by Messrs. Blake, Lash, and Cassels, barristers and solicitors, Toronto :—

I.—Legal Remuneration.

" 1. Legal remuneration in contentious matters is regulated by statute and rules of Court. Under the rules of Court a tariff (of which a copy is enclosed) was prepared. A reference to this tariff will answer many of the subsequent questions. A few words of explanation may be useful. Tariff 'A' is the first one appearing in the pamphlet sent.[1] This covers the allowances to solicitors as well between solicitor and client as between party and party upon the higher scale and lower (County Court) scale. The former scale is applicable to cases properly brought in the High Court; the lower (County Court) scale, to cases improperly brought in the High Court where the County Court would have had jurisdiction, and also to a certain small class of cases in the Higher Court and to County Court cases proper.

"Special contracts varying the allowances under the tariff are sometimes valid, and sometimes invalid. For example, when it is explained to a client that even in event of success a retainer cannot be collected from the other side, and with such knowledge he pays the retainer, it cannot be recovered back again.

" A contract that, in event of failure, a solicitor shall receive no costs or only disbursements is valid; but, on the other hand, a contract for an amount of costs which would be in excess of what is taxable under the tariff is invalid.

" It is illegal to agree for a percentage of the amount recovered, if

[1] "Table of Costs in a High Court of Justice and County Courts; also Table of Fees under the Land Transfer Act."

such percentage would exceed the taxable costs. Notwithstanding such an agreement, a client can demand a bill, and have it taxed upon the basis of the tariff.

"There is a certain amount of speculative litigation which solicitors agree to conduct without expense to their clients, or only at the expense of disbursements. This is not common among reputable solicitors, though it is not unknown to engage in business on such terms as a matter of charity.

"2. The remuneration varies with the value of the subject in dispute; that is to say, in certain classes of actions the appropriate scale of costs is the High Court scale; in other classes, the lower scale or County Court scale; in yet other classes, the Division Court scale; and the value of the subject-matter in dispute is the main, though not the only, element in determining the proper scale. Not the only element; as, for example, where the amount in dispute is infinitesimal, but the title to land is in question, the High Court only has jurisdiction, and its tariff of costs applies.

"The remuneration also varies with the stage at which the proceedings end. The costs taxable where judgment is signed in default of appearance are an insignificant fraction of the costs which would be incurred in attaining the same result if the action went down to trial.

"There is no special provision for cases in which, though the matter at issue is nominally of small value, the questions are complex and difficult, except as already stated—that certain classes of cases can only be brought within the jurisdiction of the High Court, and are therefore provided for by the tariff of that Court.

"3. The successful suitor is allowed his costs against the unsuccessful suitor if, in the exercise of his discretion, the judge so orders. Costs usually follow the event. The amount is fixed by a taxing-officer upon the basis of the tariff already referred to. Theoretically, it is a complete indemnity; practically, it is not. For example, the costs of procuring evidence cannot be taxed against an unsuccessful opponent. Again, the full amount of counsel fees also is not ordinarily taxable.

"4. A solicitor is entitled to be paid by his client the difference between party and party and solicitor and client costs. The amount is usually inconsiderable.

"5. There is a fixed scale of charges for witnesses for attendance at the trial. Ordinary witnesses are allowed $1.25 a day and conduct money; professional witnesses, where the judge certifies, $4 a day and conduct money.

"6. Each Court has its own scale of remuneration.

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"7. A solicitor is bound to deliver to his client a detailed bill of costs, if his client demands it within a reasonable time.

"8. This has already been answered. It is legal to stipulate that no remuneration shall be received in event of failure, and lawyers of good standing occasionally so stipulate where the matter is in effect one of charity, but not otherwise.

"9. It is customary, but not invariable, to demand a retainer at the outset of the litigation. It is usual to receive payment from time to time during its progress, but probably not to the extent of the work done and disbursements made.

"10. A plaintiff living out of the jurisdiction can be compelled to give security for costs. The same is true also of a nominal plaintiff, and the right arises under statutes in actions of libel, slander, and in certain other classes of actions; but, speaking generally, security cannot be demanded. Certain appeals can only be taken on terms of giving security.

"11. (*a*) The following are thought to be the amount of costs where the action has run a straight course, and there have been no extraordinary expense of any kind or interlocutory costs. They are intended to represent the expense of a typical action, stripped of everything but the direct and necessary steps, from issue of writ to judgment. The amount might be increased indefinitely by interlocutory costs.

	Dollars.
Plaintiff's party and party costs	250.00
Add for solicitor and client costs	50.00
Defendant's party and party costs	225.00
Add for solicitor and client costs	50.00
(*b*) Plaintiff's party and party costs	350.00
Add for solicitor and client costs	50.00
Defendant's party and party costs	325.00
Add for solicitor and client costs	50.00
(*c*) Plaintiff's party and party costs	150.00
Add for solicitor and client costs	25.00
Defendant's party and party costs	125.00
Add for solicitor and client costs	25.00

II.—Court Fees.

"Court fees are charged in accordance with the tariff sent herewith. They are paid by stamps at each stage of the litigation, as, for example, so much upon the issue of the writ, so much for every filing, so much for entering case for trial, etc.

"They vary according to the value of the subject-matter in dispute, as explained above; that is to say, where the action is in the High

Court, they are no greater than when it is in the County Court, or in some different or inferior jurisdiction.

"The payment of such fees is never in practice dispensed with, though apparently there is power to do so.

"The amount of them is recoverable by the successful party from the unsuccessful.

"It is felt that answers to the above questions are imperfect and unsatisfactory; but it would demand much space to give, even in the barest outline, complete and sufficient statements with regard to the various subjects dealt with."

Some extracts from the scale above referred to may be given:—

	Higher scale. Dollars.	Lower scale. Dollars.
Instructions to sue in undefended cases	3.00	2.00
In defended cases	4.00	3.00
Instructions to defend	4.00	3.00
Writs	2.00	1.00
Instructions to counsel after commencement of action		
To counsel in special matters	1.00	0.50
To counsel in common matters...	0.50	0.25
Drawing pleadings, statement of claim	2.00	1.00

QUEBEC.

The answers as to the province of Quebec are from Messrs. Hall, Cross, Brown and Sharp, barristers and solicitors, Montreal:—

I.—Legal Remuneration.

"1. The scale of advocate's fees collectable by the successful party against his opponent is regulated by a tariff of fees prepared by the counsel of the Bar, and approved of by an Order in Council. As between advocate and client there is no special tariff of fees.

"2 Remuneration varies with the value of the subject in dispute, and also in accordance with the stage at which the proceedings end. No alteration in fees is made under the conditions named in the second paragraph of this question.

"3. The answers to the foregoing questions cover the first part of this question. Should there be any disagreement with regard to the fees, the bill of costs is taxed by an officer of the Court. The amount allowed does not completely indemnify the successful litigant from all costs and expenses incurred.

"4. The tariff of fees above referred to applies only to the amount

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exigible from the unsuccessful suitor, and does not apply as between advocate and client. An advocate charges his client on a *quantum meruit* basis. As a matter of practice, in very many cases where the unsuccessful litigant pays the costs taxed against him, no fees are charged by the advocate to his client; whilst in other cases a fee, in addition to the amount so collected, is charged, if the cases were important or difficult.

"5. There is a fixed scale of charges for witnesses for their attendance at a trial; but in cases where expert evidence is required, it frequently happens that special arrangements are made with regard to such experts' fees by the party requiring their evidence.

"6. Yes. In criminal cases no tariff exists, and lawyers' fees are matters of private arrangement.

"7. It is customary to render a detailed bill of costs, with items, to a client, and in the event of it being necessary to sue to recover fees from a client, such a statement would be requisite. The advocate's oath makes proof as to the nature and duration of the services rendered, but is subject to contradiction, like any other evidence, and the value of such services as are proved to have been rendered is established by the testimony of the other lawyers.

"8. It is against the by-laws of the Bar Association to stipulate that remuneration shall be dependent upon the result of litigation; such a system of remuneration is illegal.

"9. On the whole, it is customary to insist upon some payment on account at the outset of litigation, and also on payments from time to time during its progress. These payments are often intended merely to cover disbursements, which are frequently very heavy. With regular clients of good standing, many lawyers do not exact payments until the litigation is terminated.

"10. A defendant can only obtain security for costs in the event of the plaintiff residing outside of the province. Special provisions, however, with regard to security for costs exist in injunction proceedings. A losing party, taking a case to appeal, is bound to give his opponent security for the costs to be incurred in appeal, and also security for the costs in the lower Courts, and for the amount of the condemnation therein, unless he consents to execution being issued with regard to the last two items.

"11. (*a*) Plaintiff's costs, $350; defendant's costs, $300.

"(*b*) Plaintiff's costs, $250; defendant's costs, $200.

"(*c*) In the first two of these suggested cases the costs would be materially affected by the length of the depositions of the witnesses, for which a fee of 20 cents per hundred words is allowed the official

stenographer, and by the amount at which the witnesses fees are taxed. CANADA.

"As regards the third of these suggested cases, the amount of the costs would vary according to the sum involved in the litigation, and no answer can be given to the question in its present form.

"In the event of any of the trials taking place before a jury, the costs would be increased by about $250. Jury trials are comparatively rare in our province in civil matters. All the above figures are only approximate, and represent the amounts recoverable by the winning party from his opponent.

II.—Court Fees.

"1. Yes.

"2. By Order in Council.

"3. According to the value of the subject-matter in dispute.

"4. At various stages in the proceedings as incurred, and payment in advance is always insisted upon.

"5. Yes.

"6. Only in cases where party obtains leave to sue *in formâ pauperis*.

"7. Yes; they are included in the taxable bill of costs above mentioned.

"8. Fees being paid in cash, no security is required."

NEW BRUNSWICK.

Answers as to New Brunswick have been received from Mr. E. G. Kaye, St. John, New Brunswick. Mr. Kaye prefaces his answers with the remark:—

"We practise under the old Common Law Procedure Acts, not having adopted the Judicature Acts, although some amendments have been made that incorporate some parts of these Acts.

"I should have said that as to whether payment is required in advance, it depends on the client, and whether he is worthy of credit, and in any case we ask payments on account as we go along.

"It is difficult to give an estimate of the costs of an action, as so much depends on the work, counsel employed, and generally to the incidents of the cause.

"In our province a student serves three years, if a graduate of some college, and four years if not, in the office of a practising barrister.

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After the expiration of his time he undergoes an examination for admission as an attorney. When admitted, he is qualified to practise as an attorney-at-law, solicitor in Equity, and proctor in the Admiralty, Probate, and Divorce Courts. He usually petitions the Governor in Council, and is appointed a notary public. After practising for one year as an attorney he is called to the Bar, and sworn in without any further examination. He then practices as barrister, attorney, solicitor, proctor, and notary public. There is no division of the profession; one man is everything. It is usual, however, for the one who acts as attorney to retain and employ counsel.

"By chap. 119 of our Consolidated Statutes, p. 951, a fee table is provided for the several Courts:

"(1) Supreme Court, Equity side: *usual Chancery business.*

"Where a plaintiff resides outside the province, security for costs is allowed a defendant, in the sum of $500 (Earle's Rules, 111).

"The practice as to security is after the English practice, as it was before the Judicature Act.

"Counsel fees are granted by the judge or Court, on the hearing, and argument, *in banc;* the amount, which is in the discretion of the judge or Court, varies. The counsel fee allowed does not cover consultations with client or counsel, and never covers the client's real outlay.

"(2) Supreme Court, Law side.

"No limit to jurisdiction, but if action within the jurisdiction of an inferior Court, the costs only of that Court are allowed.

"Counsel fees are on similar scale to that in Equity Court referred to above.

"The rule as to security for costs, which are allowed a defendant where the plaintiff resides outside the province, is as follows:—

"GENERAL RULES.

EASTER TERM, 1892.

SECURITY FOR COSTS.

"1. *Ordered*, That the Rule of Michaelmas Term, 1844 (Earle's Rules, 108), be rescinded, and that in future when security for costs is ordered, such security shall be given in the sum of $200.

"The above refer to taxed costs. The losing party is only compelled to pay taxed costs. This does not nearly cover his outlay, as he has to pay every counsel employed at least $25 per day; some charge as much as $50. A great deal depends upon the amount involved, etc. The counsel fee allowed by the judge on trial, and the Court on

argument, does not nearly cover the expense plaintiff may be put to as to counsel, witnesses, etc.

"Then, again, the parties have to pay their own costs between solicitor and counsel.

"Very seldom or never is there a contract in the matter of costs.

"The counsel fees are *honoraria*, and the barrister cannot maintain an action against his client for professional services (*McLeod* v. *Vaughan*, 31 New Brunswick Reports, 134). The case of *The Queen* v. *Doutre*, L.R. 9 App. Cas. 745, discussed the question of counsel fees in Quebec.

"In Michaelmas Term, 1800, 40 Geo. III., a rule of Court was made as follows:—

"'Ordered that every attorney of this Court deliver a regular bill of costs to his client, or to the client of the adverse attorney, as the case may be, before he demands the expenses of the suit, and all receipts by attorneys from their clients without this previous step will be considered a breach of this rule (Earle's Rules, 11).

"The 3 Jac. I. c. 7, requiring a signed bill, is still in force here, but not the 2 Geo. II. c. 23, s. 23, requiring delivery of bill, etc. (Earle's Rules, 12).

"The costs are taxed by the clerks and registrars of the several Courts.

"I say nothing as to costs laid down in the Supreme Court of Canada; these may be found in 'Cassel's Practice,' 147.

I.—Legal Remuneration.

"1. By statute. They may be varied.

"2. Yes.

"3. Yes. By the clerk, with right of review by the Court.

"4. Yes.

"6. Yes (*vide* above).

"8. No. It is not common, but is done and considered *infra dig.*; we call it 'on spec.'

"11. (*a*) Plaintiff, $500; defendant, $500.

"(*b*) $500.

"(*c*) $300."

NOVA SCOTIA.

The answers as to the system in use in Nova Scotia are from Messrs. Borden, Ritchie, Parker, and Chisholm, Halifax, barristers and solicitors, Nova Scotia.

NOVA SCOTIA.

I.—Legal Remuneration.

"1. Legal remuneration as between party and party in contested matters in the courts of this province is regulated by statute and by rules of Court. As between solicitor and client, the same statutes govern the remuneration of the solicitor to a certain extent, but such remuneration can be varied by special contract as between solicitor and client. Such special contracts are quite usual in this province.

"2. The remuneration does vary with the value of the subject in dispute, and it also varies according to the stage at which the proceedings end. There is no special provision for cases in which, although the matter at issue is nominally of small value, the questions involved are complex and difficult, but in such cases the taxing master (whose decision is reviewable before a judge in chambers) has a discretion within certain limits as to briefs and counsel's fees.

"3. The successful suitor usually recovers costs against the unsuccessful suitor, but his right to do so is subject to the decision of the judge or the Court. The amount of such costs is fixed by the taxing master upon taxation. The amount allowed is in most cases not a complete indemnity for all costs and expenses incurred by the successful litigant.

"4. In important cases and in cases where more than one counsel is engaged, the client is usually expected to pay an amount depending upon the importance of the action, the amount involved, and the length of time employed, over and above the sum allowed as against the unsuccessful suitor. The liability of the client to pay such excess has been recognized by our Courts, and in such cases the question would be as to the reasonableness of the amount charged in excess, having regard, so far as the solicitor is concerned, to the amount of work actually done for which no remuneration had been taxed as against the unsuccessful litigant, and, so far as counsel are concerned, the reasonableness of the charge having regard to the standing of the counsel, the importance of the action, and the length of time occupied.

"5. There is a fixed scale of charges for witnesses for their attendance at the trial. There is no fixed charge, however, for expert witnesses; and they are usually paid according to the reasonable value of their services, or according to a special contract made between the litigant and the expert witness.

"6. The remuneration of the counsel in the Appellate Court of this province is somewhat greater than in the Court of First Instance. The remuneration of counsel in the Supreme Court of Canada is considerably higher than in the Supreme Court of Nova Scotia.

"7. There is no statute or law which requires a solicitor to deliver to his client a detailed bill of costs or statement of items. It is, however, customary to deliver such a bill.

"8. It is not customary to stipulate that remuneration shall be dependent upon the result of litigation, and such a stipulation is entirely unknown among lawyers of good standing. In many cases, however, lawyers who have undertaken work for clients in very poor circumstances either do not press for payment, or make large reductions from their ordinary charges in case the litigation is unsuccessful. This, however, is a mere matter of grace, and is not the result of any stipulation.

"9. It is customary to insist upon payment of disbursements from time to time during the litigation, but otherwise it is not customary to insist upon payment on account either at the outset of litigation or during its progress, except that the client usually pays to his solicitor a retainer of from $10 to $50 at the outset.

"10. The same rules prevail in this province as in England with respect to a defendant obtaining security of costs from a plaintiff.

"11. (*a*) Plaintiff's taxable costs, $150 to $200; actual costs, $200 to $300. Defendant's costs practically the same.

"(*b*) The costs in this action would be about the same as in (*a*).

"(*c*) Plaintiff's taxable costs, about $100; actual costs, about $120. Defendant's taxable costs, about $80; actual costs, about $100.

II.—Court Fees.

"1. Court fees are charged in contentious matters.

"2. The fees are fixed by statute and by rules of Court.

"3. They are not fixed according to the value of the subject-matter in dispute.

"4. They are usually paid as they are incurred; but the officer of the Court collects the fees monthly from leading firms in the city, keeping an account of them in the mean time.

"5. The fees are the same in the Supreme Court and in the County Court, except that in the latter Court, in actions involving less than the sum of $80, the fees are slightly smaller.

"6. Under no conditions is the payment of such fees dispensed with.

"7. Such fees are recoverable by the successful party from the unsuccessful party.

"8. The officers of the Court are bound to collect such fees from the solicitors, and there is no method provided for obtaining security therefor.

"For the statutes regulating such fees in this province, see Revised

NOVA SCOTIA.

Statutes, fifth series, chapter 128; statutes of this province for the year 1885, chapter 1, s. 8; for the year 1886, chapter 39; for the year 1887, chapter 30; for the year 1888, chapter 10; for the year 1889, chapter 38; for the year 1893, chapter 28; for the year 1894, chapter 14; and for the year 1896, chapter 40."

CAPE COLONY.

The following answers are from Mr. Van Zyl, Attorney, Cape Town:—

I.—Legal Remuneration.

"Legal remuneration in contentious matters is regulated for attorneys by a tariff of charges framed by the Supreme Court in January, 1878 (copy herewith).

"The authority of the Supreme Court to frame rules of Court is by virtue of s. 46 of the Charter of Justice.

"Special contracts varying the charges cannot be enforced. By a *Placaat* in Holland of January 20, 1659 (G.P.B., vol. 3, p. 677, s. 53), it is provided 'that advocates and attorneys shall not enter into any agreement with the parties as to the remuneration to be given to them at the termination of the suit, whether in case of success or otherwise.' This refers to contentious matters. We have no decision on the point; but if an attorney make an agreement in a non-contentious matter to be better remunerated than the tariff allows in contentious matters, he, as an officer of the Court, will be bound, on complaint made of excessive or unjust charges, or of imposition, to satisfy the Court on the subject, and the Court can adjust the charges. But though no contract can be entered into by the attorney for extra remuneration for contentious matters in the Higher Courts, this does not apply to the lowest courts, the Magistrates' Courts, where there is one exception.

"By the 38th section of Act 20 of 1856 (called the Magistrates' Court Act), special provision is made that 'practitioners *in that Court* may, by agreement with their clients, charge them any sum over and above the fees allowed by the tariff.' But even this, by our law, must be a reasonable agreement, and made before the commencement of the suit. The usual extra fee claimed is one guinea by way of retainer.

"2. The remuneration does not vary with the value of the subject in dispute. There is a *minimum* tariff by which advocates are guided, but

they are free to refuse a brief unless sufficiently feed. This is in their discretion, and the fee claimed varies according to the magnitude, voluminous nature, and intricacy of the case, and the length of time necessarily occupied at the trial or argument. The amount or subject matter in dispute has nothing to do with the question of costs. Thus, if a man claims £20,000 damages for slander, and two or three witnesses on the spot are sufficient to prove the words uttered, and the brief be a small one and no doubtful point of law involved, and recovers £1000 damages, the costs of the action will, under similar circumstances, be exactly the same as if he sued for £100 damages and recovers only £25.

"The attorney's fees are fixed by the tariff mentioned, on a higher and lower scale under headings 'common cases,' 'special cases.' It is for the taxing officer to decide whether a case is of sufficient magnitude and intricacy to tax the bill of costs under the tariff 'special cases.' But there is a note in the tariff to the effect that 'no case shall be treated as special unless it is one of peculiar difficulty, and unless the amount recovered, accepted, or agreed to be paid exceeds the sum of £25.' On a reference to the tariff, it will be seen that there is no very great difference between the two sets of charges.

"3. The successful suitor is allowed his costs against the unsuccessful suitor, if the Court thinks he is entitled to them. These costs are taxed by the taxing officer of the Court. The amount allowed is according to the tariff, and can hardly be said to be a complete indemnity of all costs, as there are invariably some costs—those between attorney and client—which cannot be taxed against the opponent.

"4. The advocate makes his own terms. On this point he follows the English practice, though by our law he can sue for his fees. Leading counsel generally claim higher remuneration than others. What he has agreed to he is entitled to. But the attorney cannot agree to claim more in contentious matters than what the tariff allows him. If his client chooses to give more by way of retainer or donation, there can be no objection, but it cannot form the subject of a contract to be afterwards enforced.

"5. Yes, according to the tariff.

"6. In civil cases there is no distinction between the remuneration to witnesses in any of the Courts from the highest to the lowest, but in criminal cases the fees are absurdly low, viz. 4*s*. 6*d*. a day, and no extra allowance for travelling or hotel expenses. There is now a strong general desire to get witnesses' fees in criminal cases considerably increased, if not actually placed on the footing of civil cases.

"7. An attorney is bound to deliver a specified account of his costs

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and charges, whether as between his client and himself, or as between party and party.

"8. No. Nor would such an agreement be legal. It is unheard of among lawyers of good standing. In the case of a poor suitor, his cause is sometimes taken up *gratis*, irrespective of the results. There is nothing wrong in that.

"9. Yes. A round sum would be claimed from some clients as an advance toward meeting disbursements, and occasionally, also according to circumstances, an increase would be asked during the progress of the case. It is not customary to ask for an advance from well-known and good clients.

"10. Yes; where the plaintiff is not an *incola* (resident), and has no unmortgaged landed property in this country sufficient to meet any probable judgment that might be given against him in the case, even though for costs only. A defendant, on the other hand, does not give security. But if he is not an *incola*, and has no unburdened landed property sufficient to meet the judgment, and makes *a counter claim*, he must give security for the result of the action, *because of the counter claim*, otherwise not (*Schunke* v. *Taylor*, 8 J. 103).

"(*a*) In this case, if the suitors and the witnesses live in this city, or in the suburbs, the total usual costs, including both sides, would be about £130. Of course this is proportionately increased where the witnesses have to travel greater distances, and they are professional men entitled to higher fees.

"(*b*) The extra costs in this case would be for the extra witnesses, and the additional days and the refreshers to counsel. These extras, including both sides, would amount to £32 10*s*.

"(*c*) Including both sides, about £40. The only usual extra costs on a plaintiff side is the issuing of a summons, and where he has a pleading more than a defendant. Total, about £7.

II.—Court Fees.

"1. Yes; according to the tariff herewith.

"2. The Court fees are fixed by schedule 2 of Act 20 of 1884.

"3. They are not fixed according to the value of the subject-matter in dispute. The Court fees are alike in all suits, no matter how important or how trivial the cases are.

"4. All Court fees are prepaid.

"5. There is a tariff for the lowest Court, the Magistrates' Court (tariff herewith), which is much lower than the tariff for all the higher Courts. All fees are alike in all the higher Courts.

"6. Only where the Court allows a suitor to bring, or to defend, an action as a pauper.

"7. Yes; unless the unsuccessful party sues or defends as a pauper.

"8. The fees requiring to be prepaid, no question of security can arise.

"MEMORANDUM.

"1. Though no information is asked for on the subject, I may add that by our law an attorney's lien, or tacit hypothec for costs, is not so extensive as in England. In England a solicitor has a lien for his costs on all documents of the clients coming into his possession, no matter from what source or for what purpose, and whether they have reference to the same transaction or not (6 D. & R. 384; 6 Jurist N.S. 387; 5 Dowl. 592; 5 Jarm. Conv.; edited by Sweet, 8). With us the attorney's lien is only for the specific work done in or on the preparation of any document or deed, or on any documents *bona fide* required and necessarily used in a suit at the trial (*Kellar's Trustees* v. *Edmeades*; and *Trustees Tritch* v. *Berrange and Son*, 3 J. 25 & 217; *Queenstown Assurance Co.* v. *Wood's Trustees and others*, 5 J. 327).[1] Attorneys are specially forbidden by a *Placaat* passed in Holland, and on this point in force with us also, to retain any document belonging to his client as security for unpaid costs, except for such specific lien as mentioned above (G. P. B. vol. ii. p. 722, Art. 80; *Ibid.* p. 818, Art. 166).

"2. I may add also that the general principles of our law of costs are in force in the neighbouring colonies and republics, and that in all questions of costs the Courts are guided by the decisions of our Supreme Court in similar matters.

"3. With us advocates (barristers) and attorneys (solicitors) are distinct professions. The 23rd section of the Charter of Justice says—

"We do further ordain and declare that the functions and office of barristers and advocates shall not be discharged in the said Court by the attorneys, solicitors, and proctors thereof, and that the functions and office of such attorneys, solicitors, and proctors shall not be discharged by such barristers-at-law or advocates."

NOTE.—The scale of costs above mentioned guides the taxing masters, "so far as the circumstances of the particular case will permit." A distinction is drawn between "common cases" (lower scale) or "special cases" (higher scale). Writs of summons, drawing and engrossing under the former, 3*s.* 4*d.*, under the latter, 6*s.* 8*d.*; instructions to sue and defend, 3*s.* 4*d.* and 6*s.* 8*d.*; instructions for brief on trial, 6*s.* 8*d.*; drawing brief per sheet of 228 words, 6*s.* 8*d.*

[1] See "Judicial Practice of the Colony of the Cape of Good Hope," by C. H. Van Zyl.

AUSTRALIA.[1]

Party and party costs in the Supreme Court in QUEENSLAND are regulated by a schedule to the Rules of the Supreme Court, 1882 (Regulæ Generales, November 7, 1882), made under the Supreme Court Act of 1867 (31 Vict. No. 23, ss. 55, 58, 63) and the Costs Act, 1867 (31 Vict. No. 20, s. 36). A solicitor is free to enter into any agreement with his client as to the mode of his remuneration for any services (55 Vict. No. 22, s. 3); but it must not be champertous, nor on the no-cure-no-pay principle, nor offend against the insolvency laws (ss. 10, 11). If it is made in respect of business done or to be done in the Supreme Court, nothing can be recovered until it is submitted to and allowed by the taxing officer (s. 3); and on taxation of costs payable to a client by another person in any action or proceeding, the solicitor must disclose the agreement on oath and produce it (s. 14). The law closely corresponds with the Solicitors Act, 1870; but it makes no provision for scale charges or conveyancing, which is not much in vogue in the colony, registration of title making it unnecessary in many cases.

In the absence of agreement, solicitor and client costs are dealt with in accordance with English practice. Taxation is regulated by the Costs Act, 1867, 31 Vict. No. 20, which on this subject is a transcript of the Solicitors Act, 1843 (6 & 7 Vict. c. 73).

The Costs Act, 1867 (s. 36), gives power to the Court to establish separate scales of costs, having regard to the amount sued for, or the value of the matter sought to be recovered. In the District Courts the Court fees are regulated by statute (31 Vict. No. 30, s. 111), and the fees of counsel and attorneys and the expenses of witnesses by Rules of Court made under ss. 81, 127. No fees of counsel or attorney are allowed where the sum sued for does not exceed £10 (s. 81). The costs as between party and party are taxed by the registrar, subject to review by the judge (31 Vict. No. 30, s. 80), who can also tax costs as between attorney and client (36 Vict. No. 11, s. 8).

The Small Debts Courts Acts, 1867 and 1869, give jurisdiction to Courts of Petty Sessions to adjudicate on claims for small debts, demands, or claims for damages not exceeding £30 (31 Vict. No. 29, s. 2). The statutes fix the fees to be taken by officers of the Court (ss. 7, 8, sched. A), and also the fees of counsel and attorney and witnesses (31 Vict. No. 29, s. 9, sched. A; 33 Vict. No. 4, ss. 2, 3).

[1] Prepared by Mr. Craies, barrister-at-law.

The successful party, if plaintiff, is entitled to recover the scale costs and Court fees; and, if defendant, is similarly entitled, unless the Court certifies that he should not have them. Fees of counsel are not allowed unless the amount claimed against a defendant, or recovered by a plaintiff, exceeds £10 (31 Vict. No. 29, s. 9, sched. B).

The Colony of VICTORIA has adapted the Judicature Acts by the Supreme Court Act, 1890 (54 Vict. No. 1142). Ss. 207, 208 deal with taxation, and are based on the Solicitors Act, 1843 (6 & 7 Vict. c. 73).

S. 23 empowers the making of rules as to costs of proceedings in the Supreme Court. In 1884 the Court adapted to the colony the R.S.C., 1883, which continue in force under the Act of 1890.

In NEW SOUTH WALES the Judicature Acts have not been adopted, and the practice as to costs remains in accordance with the common law and the C.L.P. Acts, and Consolidated (Earle's) Rules, and Consolidated Chancery Orders. But the Court is disposed to adopt some at least of the recent English rulings as to costs. See *Ritchie* v. *Hudson*, 1894, 15 N.S.W. Rep. Equity, 245, on the subject of refreshers.

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BOMBAY.[1]

I.—LEGAL REMUNERATION.

"1. In Bombay, at the Presidency Town High Court, legal remuneration of counsel is matter of private arrangement, the fee being regarded as an *honorarium*. For costs the fee is taxed by the taxing master.

"The remuneration of solicitors is regulated by a scale settled by the High Court. The amounts charged are taxed by the taxing master as costs, and on the application of a client as between him and his solicitor. The business arising in the Presidency Town is brought before the High Court by solicitors and advocates with a distribution of duties similar to that prevailing in England. At the appellate side of the High Court, appeals are received from decisions of the judges of the High Court in original jurisdiction, and from the District Courts of the Mofussil. In appeals from the original side of the High Court, the fees of solicitors and advocates are regulated as in original suits. In appeals from the District Courts, the work of both solicitor and advocate is done by pleaders, whose fees are for costs allowed according

[1] Contributed by Sir Raymond West, K.C.I.E.

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to the *ad valorem* scale to be presently described. If advocates are retained, as they frequently are, in appeals from the District Courts, their fees are not allowed as costs. Their amount is regulated merely by arrangement between counsel and client. The pleaders of the High Court, as in the Mofussil, are allowed to bargain for terms with their clients before undertaking a case, but not afterwards. They usually stipulate for a 'winning fee' in case of success, in addition to the percentage fee allowed as costs. In the Presidency Small Cause Court, a scale of fees is in force providing remuneration at fixed rates for advocates, solicitors, and pleaders, who are all allowed to argue cases in the Court. These fees are allowed as costs; but private arrangements are commonly made for sums in excess of the scale as between solicitor or pleader and client. In some cases the costs of counsel are allowed only by special sanction of the judge in particular circumstances.

"For suits in the Provincial or Mofussil Courts, a scale was provided by Regulation II. of the Elphinstone Code of 1827, and is still in force for the regulation of costs. It is the same for an original suit, for an ordinary appeal (to the District Court), and for a second or special appeal to the High Court. The fees may, therefore, have to be paid three times over. The scale *ad valorem* is for a suit—

Up to Rs.2000	3 per cent.
For the next Rs.8000	2 ,,
,, next Rs.10,000	1 ,,
,, excess over Rs.20,000	½ ,,

"These are the fees allowed as costs: (1) in the court of first instance; (2) in the court of regular or first appeal; (3) in the court of second appeal, *i.e.* the High Court.

"The pleader performs the duties of both solicitor and counsel. He is allowed to make any bargain he likes for his actual remuneration in excess of the scale; but, once engaged, he is not allowed to exact anything more.

"The pleader's *ad valorem* fee is his recognized remuneration for all work connected with a suit from institution down to execution. It is allowed when a sum adverse in a lower court is replaced by a favourable one in a higher court. The stipulation for a winning fee in a lower court always extends to success in the final event.

"Interlocutory applications in a suit do not, under this system, occasion extra costs or a claim for extra remuneration. But if an application of any other kind is made, costs are allowed on an estimate of a quarter of the sum that would be allowed in a suit involving a similar amount. This covers the whole conduct of the application from beginning to

end. When no pecuniary estimate is possible, a minimum fee is allowed. But in these, as in other cases, the pleader may make his own terms *inter se* with his client. Advocates (of the High Court), when retained, are not allowed for in costs.

"In Sind the remuneration of pleaders is allowed for in costs according to the number of attendances before the Court, plus fees for drawing the plaint and the defence. But, as between pleader and client, private bargains are allowed, and are always made.

"A statutory sanction to bargain for professional services in the courts of the Bombay Presidency was given by Act I. of 1846. Freedom of contract is allowed, subject only to the control of the High Court in cases of overreaching and extortion. In such cases the Court has many times refused to give effect to the agreements, and in some instances it has deprived or suspended the pleaders.

"2. The remuneration is, in each stage of a provincial suit, *ad valorem* according to the scale I have given. The only special provision is that of a minimum fee in matters not admitting of precise valuation. It has not been found possible to devise a plan of regulating the fees allowed according to the importance of cases apart from their pecuniary appraisement. The heavy institution fees, amounting to about 7½ per cent., have the effect of keeping valuations low, and pleaders in many cases look rather to their bargains than to costs for remuneration.

"3. The unsuccessful litigant has to pay the victor costs according to the scale above given. The amount is settled by the clerk of the Court and the accountant, subject to checking by the pleaders, and, in case of dispute, a reference to the judge. Besides these *ad valorem* fees, the defeated party has to pay the institution fee of about 7½ per cent., and the cost of all summonses, warrants, notices, etc., in the case according to a partly *ad valorem* scale settled by the High Court.

"4. In the High Court an advocate's fee is settled between him and the solicitor. The taxing master allows what he thinks reasonable as costs. The solicitor's fees are settled by scale, and the client may get them taxed. The pleader may make, and almost always does make, a bargain for extra remuneration beyond the *ad valorem* scale.

"5. Witnesses' expenses are allowed according to a scale settled by the High Court. This varies according to the social position of the witnesses. If witnesses are called vexatiously, the Court (Mofussil) may disallow their costs as against the adversary.

"6. The scale is the same for original suits, and for first and second appeals. In criminal courts in the Mofussil the pleader employed as Government prosecutor is paid a fee of Rs.30 per case *per diem*. No provision is made as to payment of pleaders for the accused. The

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Government pays pleaders to defend indigent persons charged with murder at a rate *per diem*. In the High Court the judge presiding at a criminal session may ask a counsel to defend, and for this, I think, Rs.100 is allowed by Government.

"7. In High Court proceedings, a bill is delivered giving full details. This is required by the Court. In the Mofussil courts the expenditure allowed in costs is all made through the office of the Court, as extra witnesses, subsistence, and travelling allowances. The disbursements are all embraced in an account annexed to the decree, and this is the bill of costs. The contract for a winning fee stands apart. It is not recognized in costs, but may be sued for.

"8. The winning fee is universal in the Mofussil, but not allowed (save in appeals from the Mofussil) in the High Court. Pleaders are not allowed to bargain for less than the scale fees.

"9. Among solicitors of the High Court the practice is substantially as in England. Amongst pleaders the practice is to take a fee on account, independent of winning or losing. All the outgoings, as they become necessary, are supplied by the client, and he usually pays his pleader when successful by an order on the nazir as accountant of the Court for the winning fee out of the costs, etc., recovered from the opposite party.

"10. A plaintiff, not resident in British territory, and not having real property within the jurisdiction, is called on to give security for the defendant's costs. An appellant may similarly be required to give security. Where stay of execution is sought, it is granted as a rule only on security for execution of the final decree.

"The institution fee of 7½ per cent. is a guaranty of good faith, and pauper suits are subjected to a preliminary inquiry to ascertain whether there is a *primâ facie* case.

"11. (*a*) Suit for Rs.10,000 in the High Court; costs taxed by taxing-master. In a Mofussil case the costs allowed would be—

	Rs.
Institution fee	490
Appeal[1]	490
Advocate's fees in original suit	220
,, in appeal	220
Process fees	52
Witnesses' allowances	25
Stamps on copies of documents filed as evidence	20
On copies of judgments and decrees	20
Copying fees	15
	Rs.1552

[1] This presumes one appeal, which would be almost inevitable.

"The decree awarding Rs.5000 damages would probably give costs in proportion or Rs.776 to the plaintiff. He would probably have engaged to pay a winning fee of Rs.500 or in proportion, so that Rs.250 must be deducted from his recovery in costs, thus reducing the recoupment to Rs.526. A second winning fee of, say, Rs.300 would leave Rs.226. The defendant would have to pay all his own costs, and Rs.776 to plaintiff. The first or absolute fee to his pleader would probably be about Rs.200.

"(*b*) Suit in the High Court, costs taxed as above. In a Mofussil Court, institution fee according to the damages claimed; advocate's fees *ad valorem* as above; process fees, witnesses' allowances, stamps, copying fees. In Appeal (if appealed), appeal fee, advocate's fee, process fees, stamps, copying fees.

"(*c*) Breach of contract; damages claimed, Rs.1000. In the High Court, costs taxed as above. In a Mofussil Court—

	Rs.
Institution fee	80
Advocate's fee	30
Process fees	10
Stamps	10
Copying fees	5
	Rs.135

"Such a case, turning on a question of construction, would almost certainly go to appeal and second appeal, involving about a double repetition of the above costs.

"If decided finally in plaintiff's favour for Rs.800, with costs in proportion, he would recover four-fifths of the above costs, but would have to pay a winning fee in each of the three courts. This might cost him about Rs.200.

II.—Court Fees.

"1. Court fees are charged on suits and appeals. Process fees also are levied.

"2. The institution fees are fixed by Statute, Act 7 of 1870. They vary from about 10 per cent. to 4 per cent. The average is about 7½ per cent. Process fees, copying fees, etc., are fixed by the High Court, and sanctioned by Government.

"3. They are fixed with reference to the appraisement of the suit. For particular cases not admitting of valuation (declarations, divorce, etc.), specified institution fees are prescribed.

"4. Fees are all paid in advance. Institution fees and fees on applications and affidavits, etc., are levied by requiring plaints,

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applications, etc., to be presented on stamped paper. Notices and summonses are not sent out until the process fees and witnesses' allowances have been deposited in the Court's office.

"5. The fees are the same in the courts of first instance and in the appellate courts.

"6. Indigent persons are allowed to sue without paying institution fees. This is subject to a preliminary inquiry into circumstances, and into the grounds of suit. The institution fees are a first charge on any sum recovered.

"7. Court fees are included in the costs provided for by the decree, and are paid usually by the defeated party. But 'costs in proportion' is a common award.

"8. No security is needed, as the fees are paid in advance. If it is discovered that a suitor shammed indigence, the collector proceeds against him for the fees remitted.

BENGAL AND MADRAS.

"In Bengal and Madras the *ad valorem* system of payment of fees for the advocacy and conduct of litigation prevails as in Bombay, outside the Presidency towns and in the Presidency Small Cause Courts. The percentage scale differs somewhat from that of Bombay, but the principle is the same.

"The institution fees under Act 7 of 1870 are uniform throughout British India.

"Process fees vary from province to province. They are in all regulated by the High Court or Chief Court and Government.

"In the High Court institution fees are not levied, but fees are taken for every stage and process, and always in advance or at the moment. The aggregate expense of a suit in the High Court is, on the average, higher than in the Mofussil."

BURMA.[1]

"The accompanying form of decree in an original civil suit will give an idea of the general costs of a suit in Burma.

"Stamp for plaint, *i.e.* statement of claim, is regulated by the Court Fees Act of 1870. The fees leviable are *ad valorem*, and fixed

[1] Contributed by Mr. Maung Kin, barrister-at-law, Rangoon.

according to the nature of the suit. Stamp for power of attorney and exhibits is regulated by the Stamp Act of 1879.

"Pleader's fees are governed by the rules of the Superior Courts. Ordinarily they are 5 per cent. in contested cases; in non-contested cases only 2½ per cent. is allowed. We have no distinction such as you have between barristers and solicitors. As a rule (in this matter I have had very little experience, but I give my opinion upon information) litigants 'mark' fees about five times more than they are entitled to from their opponents. In appeals and miscellaneous matters, such as motions and the like, advocate's fees are in the discretion of the judge; and in these cases he may take into consideration the standing and fame of the successful litigant's counsel. Advocates can sue for fees for non-contentious business. But where non-contentious business arose out of the contentious, or *vice versâ*, they cannot sue for anything at all. Their services in this respect are not divisible."

The decree above referred to is an action for the recovery of Rs. 9500, principal and interest, or, in default, foreclosure and sale of certain mortgaged property, consisting of five pieces of paddy land, the crops thereon, and twenty buffaloes. The Court made a decree in terms of the prayer. The following bill of costs is indorsed on the decree :—

COSTS OF SUIT.

Plaintiff.	Amount. Rs.	A.	P.	Defendant.	Amount. Rs.	A.	P.
1. Stamp for plaint	455	0	0	1. Stamp for power			
2. Stamp for power	0	8	0	2. Stamp for petition ...			
3. Stamp for exhibits ...				3. Pleader's fee			
4. Pleader's fees on Rs. 9500	340	0	0	4. Subsistence for witnesses			
5. Translation fee				5. Service of process ...			
6. Subsistence for witness for attendance				6. Translation fee			
7. Commissioner's fee ...				7. Commissioner's fee ...			
8. Service of process ...	2	0	0				
Total	797	8	0	Total	Nil.		

	Rs.	A.	P.
Deduct one-half of plaintiff's advocate's fees, being a decree on confession	170	0	0
Total amount of costs awarded to plaintiff	627	8	0

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The law and practice as to legal remuneration and Court fees vary in different parts of the United States. The practice in most States is thus described by Mr. Newton Crane, an English barrister, and also a member of the St. Louis Bar:

"Both branches of the profession are united in one, and the American lawyer is therefore both counsel and solicitor. He is called an 'attorney,' and he conducts the business of an action throughout the litigation. He charges 'fees,' and has no 'costs,' as they are understood in England, and no 'out-of-pocket' expenses, as the fees for filing documents and hearing are not paid in advance, but abide the issue. The only 'costs' which are recognized by the Statutes of the States of New York are those which are known in this country as the costs of hearing, or 'hearing fees.' When, therefore, a plaintiff is given costs, only these Court costs are meant. There is no such thing in America as costs as between party and party, or as between solicitor and client. If a plaintiff succeeds in his action, he is obliged to pay all of the expenses, including attorney's fees, which he has been obliged to incur in the successful prosecution of the case. If a defendant is forced to expend large sums in opposing a meretricious demand, there is no way by which he can get his costs out of the plaintiff.

"There are a few States in America where the fees of the attorney are allowed by statute under certain contingencies, but even in these States (and New York is not one of them) plaintiff cannot recover reasonable counsels', or attorneys' fees, unless the defendant acted in bad faith, or has been stubbornly litigious, or has caused the plaintiff unnecessary trouble and expense (*Guernsey* v. *Shellman*, 59 Ga. 796). In a few cases where exemplary damages have been given, the Courts have allowed plaintiff's costs, but these cases are not generally followed (*Winkler* v. *Roeder*, 8 State Rep. 157). The general rule which has prevailed for many years is stated by the Court in *Reggio* v. *Braggiotti*, 7 Cushing, 166, as follows: 'Counsels' fees cannot be allowed. These are expenses incurred by the party for his own satisfaction, and they vary so much with the character and distinction of the counsel that it would be dangerous to permit him to impose such a charge upon his opponent; and the law measures the expenses incurred in the management of the suit by the taxable costs.' In the expressions 'counsel' and 'taxable costs' in this dicta, the Court means 'attorney' and 'hearing fees.' It is not usual for American lawyers to render an

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itemized statement of their charges. Instead of this they make an elastic estimate of the value of their services, the trouble they have been put to, and the time they have been occupied, and charge their fees in a lump sum. In too many instances, in arriving at the sum, they take into consideration what their clients are willing or can be forced to pay."

With reference to agreements by lawyers that "they will charge nothing for their services unless they are successful, and that, if successful, their whole costs shall be an agreed part of the sum recovered," Mr. Newton Crane adds, "Such contracts are not champertous in America, but are frequently made. It is not usual for American lawyers of the better class, when they receive business from other lawyers, to allow the latter any share of the fees received. This is, however, frequently done by another and more numerous class of attorneys."

In a further memorandum Mr. Newton Crane remarks, "The conduct of litigation is very different in the United States. A lawyer, combining in himself the dual functions of solicitor and barrister, takes his instructions direct from his client, advises him as to his rights and obligations, settles the pleadings, interviews the attorney for the opposing side, attends to all interlocutory matters and proceedings, sees that the case is placed on the lists for trial, conducts the trial, drafts the decree or judgment, makes the bill of exceptions for appeal if necessary, follows the case through the Court of last resort, and, finally, when required, directs the sheriff in the levy of execution. He does all the work, and assumes all the responsibility. For this work he makes no detailed or itemized charges, but sends in an account for a 'lump sum,' based upon the length of time he has been employed on the case, the skill he has been obliged to exercise, the responsibility he has assumed, the amount at stake, the advantage he has gained for his client or the loss he has saved him, and, in too many instances, what he thinks the client can afford to pay or will pay.

"If his bill is disputed, there is no way in which the client can have it taxed. If the client refuses to pay, the attorney can recover reasonable compensation for his services upon a *quantum meruit*. The rule as to the measure of compensation was said in *Smith* v. *Davis* (45 N. H. 566), to be 'the degree of legal knowledge exercised, the responsibility incurred, the labour bestowed, and sometimes the amount involved.' So long as it is neither oppressive nor champertous, an attorney may make any manner of contract with his client (*Thurston* v. *Percival*, 1 Pick. 415), and even when the special agreement is void for champerty, recovery of fees may still be had on a *quantum meruit*. The attorney may agree that his compensation shall be contingent on the

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success of the litigation (*Stanton* v. *Embrey*, 93 U. S. 548); and, in a certain class of cases, such as actions for damages for personal injuries such agreements are very common. In *Wylie* v. *Coxe* (15 How. 415), the Supreme Court of the United States decided that an attorney employed to prosecute a claim before a commissioner for a contingent fee of 5 per cent. of the sum awarded to his client, had a lien for that amount for the sum recovered, and such a one as the Court could enforce by a bill in equity.

"What to the English lawyer will seem most unjust is that the costs, so far as the lawyers' fees are concerned, and the general expenses of the litigation are, in America, paid by the parties irrespective of who wins or loses. The only costs which abide the result are the Court costs or fees of the Court officials, which are very small and embrace trifling charges for filing papers, docketing, recording motions, calling juries, and the like. The only exceptions where the losing party is obliged to pay any part of his adversary's attorney's fee is mainly in cases where suits are brought for the recovery of penalties imposed by statutes; but in such cases the amount so recovered is so small that it is practically not considered by either the attorney or his client. The same may be said as to the statutory allowances for the attorneys' fees in the State of New York, the only State in which there is any statute on the subject.

"In estimating the costs of the litigation in their replies to the questions sent out by the committee, the American lawyers have had regard to the foregoing facts, and in considering them the reader should bear in mind that the sums fixed embrace the entire cost to the client—that is, such costs as would in this country be embraced in a bill of costs, embracing both the charges of the solicitor and the fees marked on counsel's brief."

STATE OF NEW YORK.

The following is a series of answers which Mr. Osgood Smith, Attorney and Counsellor-at-Law, New York, has been good enough to prepare :—

"A technical difference between attorney and counsellor is recognized in the State of New York; but practically there is no difference, as every one who is admitted to the Bar becomes thereupon an attorney *and* counsellor-at-law.

"The following answers refer only to the question of legal remuneration and costs in the State of New York :—

I.—Legal Remuneration.

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"1. Legal remuneration in contentious matters is regulated entirely by special contract, or, in the absence of that, by a *quantum meruit.*

"2. The remuneration varies with the amount in dispute and in accordance with the stage at which the litigation ends. The remuneration of a test case is proportioned to the amounts actually dependent upon the point on which a test decision is desired. A very complex case would command greater remuneration than a simple one, but not as much as an equally complex case involving a larger amount.

"3. A successful suitor is allowed costs against an unsuccessful one. In case of disagreement, such costs are taxed by the clerk of the Court.[1] Theoretically, costs are supposed to meet all the expenses of a successful litigation; practically, they pay only a very small percentage of such expenses.

"4. A lawyer is entitled to receive, and almost invariably receives, a great deal more than his costs as his remuneration.

"5. There is a fixed scale of prices for the attendance of witnesses at trials. No attention is ever paid to this when experts are employed, and very frequently witnesses are remunerated for their expense and trouble in attending a trial to an amount far in excess of the statutory remuneration.

"6. As a special contract governs a lawyer's remuneration, it will, of course, be different in accordance with the Court in which he practises.

"7. There is no law specifically requiring a lawyer to deliver to his client a detailed statement with items, other than the general statutes requiring a plaintiff in certain cases to furnish a bill of particulars in connection with his complaint. There is no settled custom as to the form of a bill which a lawyer renders. He may give every service and disbursement in detail to the exact cent, and put a specified price upon each act done, or he may simply render a bill as for professional service and disbursements, in the case —— against ——, for a lump sum without a single item. Every imaginable intermediate course between these two extremes is also adopted.

"8. It is legal and statutory that a lawyer's remuneration shall be

[1] See, as to "amount of costs allowed," s. 3251 of Code of Procedure of New York State. The costs allowed are such as these—

	Dollars.
To plaintiff, for all proceedings before notice of trial ...	15 or 25
For all proceedings after notice of trial and before trial ...	15
For trial of issue of law	20
For trial of issue of fact	30
Where trial necessarily occupies more than two days, in addition	10

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dependent upon the result of litigation. It is common among lawyers of good standing; but, of course, any lawyer who has all the practice he can attend to at fixed rates will not accept a contingent fee.

"9. There is no fixed custom as to the time of payment by clients to lawyers, but it is generally the custom for a lawyer to require a retaining fee from a stranger before performing any services, and further advances as they may become necessary from time to time; but this is not ordinarily done with old clients.

"10. A defendant can obtain security for costs from a plaintiff only in special cases, *e.g.* non-residence or imprisonment of the plaintiff.

"11. In the three cases set forth, the 'costs' of either party against the other are dependent wholly upon the number of terms during which the case has been on the calendar, the number of witnesses called, and the number of days which the trial lasted; the successful party being allowed $10 for each term the case has been on the calendar, not to exceed five, fifty cents for each day of attendance and mileage of each witness whom he called, and $10 if the trial occupies more than two days. The number of counsel employed does not affect the costs, and the amount claimed or awarded by the judgment does not affect them, except that in certain specified actions the Court may allow the successful party a sum in addition to costs based upon a percentage of the amount recovered, or, when the recovery is defeated, the amount sought to be recovered (see ss. 1769, 3252, 3253, and 3254, Code of Civil Procedure). Such additional allowance rests wholly in the discretion of the Court.

II.—Court Fees.

"1. Court fees are charged in contentious matters.

"2. The amount of such fees is fixed by statute.

"3. They have no relation to the value of the subject-matter in dispute, except as stated in answer to question 11 above.

"4. Court fees are paid, as the case progresses, to the Court officers in cash, and no credit is given, except as a personal favour between the officer and the attorney.

"5. The fees differ in superior and inferior courts.

"6. The payment of Court fees is dispensed with only in the case of a suit *in formâ pauperis*.

"7. Such fees are recoverable by the successful party from the unsuccessful party.

"8. No security is required for the payment of such fees, as they are always paid in cash as soon as due.

"For an official scale of fees in the State of New York in several matters, see Chap. 21 of the Code of Civil Procedure, ss. 3228–3332." UNITED STATES.

A further statement by Mr. Julien T. Daviez, Attorney and Counsellor, New York, is also added—

"In reply to the questions contained in your communication of August, 1895, with reference to 'Costs of Litigation,' I shall confine myself to the practice in the Courts of New York State, and my replies are applicable to both equity and common law suits, with this qualification, that in equity suits taxable costs are in the discretion of the Court, while in common law actions they go, of course, to the prevailing party.

"In this State admission to the Bar simultaneously confers the degrees of attorney and counsellor-at-law. In practising the same individual acts both as attorney and as counsel frequently; but in important cases, the work of the attorney and of the barrister or counsel is often separated and performed by different individuals. I shall not, in answering, repeat the questions of the pamphlet, but will indicate my answers to them by numbers corresponding to the several questions.

I.—Legal Remuneration.

"1. Legal remuneration in this State in all matters, except in certain criminal actions hereinafter specified (6), is regulated by special contract with the client, or, in the absence of such contract, by the custom of the profession. An attorney and counsellor may sue for and recover either upon his contract, or, if there be none, upon a *quantum meruit*. Taxable costs are regulated by statute with reference to the steps taken. They belong to the client when recovered, and are not the measure of the value of the services of his attorney or counsel.

"2. The remuneration depends entirely upon the special contract, which, however, is not usually made in advance. In fixing the fee the value of the subject-matter in dispute, the complexity and difficulty of the case, and the stage at which the proceedings end are generally taken into consideration, both in cases of special contract and of a charge based upon a *quantum meruit*. There is no special provision or custom for determining the amount to be charged other than the custom of charging on a scale, as nearly as it can be ascertained, prevailing in similar cases among lawyers of similar rank and years in the profession.

"3. A successful suitor is allowed costs against the unsuccessful suitor, in common law suits as of right, and in equity suits by the exercise of the discretion of the Court, the amounts of which are fixed in all cases by statute, and are alike for similar stages of the proceedings in all

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suits. In certain cases an allowance may be granted in addition to such costs (Rule 45, Supreme Court Rules). This allowance is entirely within the discretion of the Court, and the application for it must be made before the final costs are fixed. It cannot exceed five per centum upon the amount involved, and in no case can be greater than two thousand to all the parties on one side of the litigation.

"The amount of costs and fees are set forth at length in Chap. 21, ss. 3228–3332 inclusive, of the New York Code of Civil Procedure, and for the Surrogate's Courts, ss. 2558–2567 inclusive of the same Code. This amount is not a complete indemnity for all costs and expenses incurred. The amounts paid attorneys and counsel, and many of the expenses, such as typewriting, cannot be charged against the unsuccessful suitor.

"4. The amount to which a lawyer is entitled depends, not upon the success or failure of his suit, unless a contingent contract for compensation has been made, but upon his special contract with the client or the value of his services, although success or failure will be considered in ascertaining the value of the services in the absence of a contract. In the event of failure, the client not only must pay the costs allowed against him, but also a reasonable compensation to his own lawyer, unless he is absolved from such payment by the terms of his contract.

"5. Charges for witnesses for attendance at trials are fixed by statute (see ss. 2566, 3318, 3319, and 3327 of the New York Code of Civil Procedure), and are taxable as costs. These charges do not apply to experts' fees, which are a matter of special contract. Witnesses may be paid for their attendance an amount exceeding the statutory fees, and fairly representing the value of their time taken.

"6. The remuneration of lawyers depends somewhat upon the Court in which the proceeding occurs. Appellate tribunals generally command the services of the more experienced members of the bar, whose scale of charges is higher than those of younger men. Civil business generally gives higher remuneration than criminal business.

"In certain criminal actions, where the defendant is too poor to employ counsel, the Court will assign counsel to the defence, and, at the close of the case, make a moderate allowance for services, which is paid by the county.

"7. A lawyer is not required by statute to deliver to his client a detailed bill of costs or a statement with items, but it is very generally the custom for him to deliver such a bill. This is a matter of individual practice.

"8. A contingent fee is occasionally arranged for between a lawyer

and his client, and in our State is legal, but is not, I believe, common among lawyers of good standing. UNITED STATES

"9. There is no general rule for the payment on account at the outset of litigation. Retainers are generally exacted, however, from new clients and in cases where, during the progress of a suit, fresh counsel are brought in. Payments are generally requested on account during the progress of a long litigation.

"10. The rules for security of costs from plaintiff are set forth in ss. 3268–3279, inclusive, New York Code of Civil Procedure, where the instances are enumerated in which such security can be required.

"11. (*a*) Actions for personal negligence are generally brought by lawyers, not of the highest standing, who contract to receive from fifty to twenty per centum of the amount recovered, and to charge nothing unless successful. In the absence of such an arrangement, a fair charge against the plaintiff would be £100, and against the defendant £70.

"(*b*) £100 to each side.

"(*c*) £30 to each side.

"The taxable costs to the prevailing party in each of the cases given would be about £20, in addition to the amounts above specified as remuneration to counsel.

"12. In this State there are no Court fees or legal taxes in contentious matters, other than as provided in the above-quoted sections of the New York Code of Civil Procedure."

The following answers are by Mr. J. Newton Fiero, Albany, State of New York:—

I.—Legal Remuneration.

"1. Legal remuneration is regulated usually by custom, sometimes by special contract, and a certain amount of costs is allowed, to be collected from the opposing party. Special contracts are valid and are usual, particularly in actions sounding *in tort*, more especially the actions against corporations for negligence.

"2. The remuneration varies with the value of the subject in dispute, and according to the stage at which the proceedings end. If the matter in issue is nominally of small value, compensation would be very much less than if large amounts were involved, unless it were a matter of special interest to the client, who desired an adjudication by reason of his general interest in the matter, and on account of questions of that character coming up affecting his business. In an action affecting personal character, the charges would necessarily vary, dependent upon

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the standing of the person involved in the action, and his pecuniary responsibility. In actions for negligence or in tort, the percentage, which is arranged for on the part of counsel, is usually the same whether the cause ends with the trial Court or is appealed, and is usually upon the basis that the cause will be carried to the highest appellate tribunal.

"3. The successful suitor is allowed costs, which are fixed by our Code of Procedure. Such costs are not a complete indemnity, except in cases where the amount involved is small and the labour is not great. This, however, is subject to the further qualification that an allowance of five per cent. may be made upon the subject-matter involved by way of compensation, which goes very far toward compensating the attorney. This sum, however, cannot exceed $2000.

"4. The lawyer is entitled to be paid by his client a reasonable compensation, without reference to the amount which may be fixed by the Court as against the opposing party.

"5. There is a fixed scale of charges for witnesses in attendance upon the trial. Fifty cents is allowed for each day's attendance, and eight cents per mile for necessary travel in attending the Court.

"6. The remuneration in all the Courts depends so largely upon the character of the action and amount involved, that it is impossible to say whether there is any distinction between the remuneration in Courts of the first instance or appellate tribunals. As a larger amount of time is usually consumed on the trial in the first instance, it may perhaps be said that the compensation is larger than upon appeal, but probably less for the same amount of time involved. In other words, counsel will ordinarily receive a larger compensation per diem for preparation and argument in the appellate Court than for the time spent in preparation and trial in the first instance.

"7. A lawyer is not required to deliver any detailed bill of costs or statement of items. The custom in that respect varies with lawyers, but bills are ordinarily not given with very much of detail. Per diem charges perhaps, with the number of days spent, are most usual.

"8. In the class of cases spoken of as sounding *in tort*, it is quite usual that the remuneration shall depend upon the result of the litigation, more especially so where the client is unable to make compensation, unless out of the fund which may be realized. Such payment is legal, and is common amongst the best lawyers of the State.

"9. Leading members of the Bar ordinarily expect a retainer, but it is not customary. Payment from time to time during the progress of a protracted litigation is usual.

"10. A non-resident plaintiff may be obliged to give security for costs, and it is in the discretion of the Court to require an assignee, guardian, or executor to give such security, otherwise plaintiff is not obliged to give security for costs.

"11. (*a*) The charge made by plaintiff in a case such as is suggested, if retained by a responsible client and fee not contingent, would be from $250 to $500.

"(*b*) A charge of 750 upon each side, to be divided between the two counsel, would probably be reasonable.

"(*c*) $100 to $250, possibly $500, dependent entirely upon the amount involved.

II.—Court Fees.

"1. Court fees are substantially nominal.

"2. The fees are fixed by the Code.

"3. The subject-matter has no relation to the amount of fees. They are absolute in each case.

"4. Payment in advance is not insisted upon usually.

"5. The fees are somewhat different in superior and inferior Courts, but in no case will they exceed $5, except for copies, papers, or other matters which either party may require.

"6. Payment of fees is dispensed with where plaintiff has obtained leave to sue as poor person.

"7. Such fees are recoverable by the successful party from the unsuccessful party.

"8. No security is provided for for the payment of such fees."

State of Massachusetts.

Mr. Louis D. Brandeis, Secretary of the Harvard Law School, sends the following answers as to the practice in Massachusetts:—

"In practically all contentious matters, the expense of the litigation, with the exception of trifling Court costs, is borne by the client, whatever the result of the suit. These expenses consist mainly of counsel and attorney's fees. The remuneration for these services, which cover those services performed in England by barristers, as well as those performed by solicitors, is not fixed by statute, or by rules of Court, or even by custom.

"There is no measure for lawyers' service in matters in Court or in matters out of Court, except that the charges shall be reasonable. What is reasonable depends on a multitude of considerations, as questions of reasonableness do in every other department of human

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activity. The main considerations which determine the amount of charges are these: the amount involved, the time devoted to the matter, the difficulty of the question, the result of the services, the financial ability of the client, and the standing of counsel. As there is no accurate measure, it will often happen that practically the same services are charged for at very different rates by different counsel, and indeed frequently the same counsel will charge different amounts for substantially the same services.

"Except in cases of contested wills, or the distribution of a fund in Court, there are but few instances where any substantial portion of attorney's or counsel's fees are recovered by the winning party from the loser.

"The Court costs recoverable in Massachusetts consist mainly of sheriff fees, witness fees, small fees for entry of case, and, what are termed in Massachusetts, 'fictitious' costs, that is, a small allowance to the victorious party towards the expenses of the litigation. These fictitious costs are so small—in ordinary cases varying from about $15 to $45—that they are hardly considered in any litigation except that relating to petty claims.

"With this general statement, I answer the specific questions put as follows:—

I.—Legal Remuneration.

"1. No.

"2. The remuneration does vary with the value of the subject in dispute, or according to the stage at which the proceeding ends. There is no special provision for cases in which, though the matter at issue is nominally of small value, the questions involved are complex and difficult, and important as governing a number of other cases or affecting personal character; but counsel will ordinarily take these facts into consideration on making up his charge. Legal right of action exists for services of barristers as well as of solicitors. It is common to have amounts paid from time to time on account of fees. Some counsel require a retainer at early stages of nearly every case, but this is by no means universal.

"3. The successful suitor is allowed costs against the unsuccessful suitor. The amount is fixed by statute or rule of Court; costs are taxed by the clerk of Court, or in case of appeal from him, by the judge. The amount allowed is but to a slight extent indemnity for costs and expenses of the successful litigant.

"4. The lawyer is entitled to be paid by his client an excess over and above the sum allowed as against the unsuccessful suitor, and is in nearly every instance so paid.

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"5. There is a fixed scale of charges for witnesses. In the Inferior Courts it is 50 cents per day, and in the Superior Courts $1.50 per day, with an allowance for travel. Experts are paid larger sums, varying from about $25 to $100 per day, according to their reputation. No scale of charges for experts is fixed, and the amounts paid experts in excess of the 50 cents or $1.50 for ordinary witnesses are not recoverable as costs. Other witnesses do not ordinarily make any contract as to the amount to be paid them for attending as witnesses. Such contracts would doubtless be deemed void, as against public policy, and as without consideration where the attendance of the witnesses is compellable. The existence of such a contract would always be a ground for impeachment of the credibility of the witnesses.

"6. For counsel's services in the Superior Courts the remuneration is usually larger than in the Inferior Courts. It cannot be said that remuneration for services in the Criminal Courts is as a rule less or greater than in the Civil Courts. The amount of the remuneration would depend rather upon the standing of counsel and the other considerations mentioned above than upon the Court in which the case is being tried.

"7. There is no statute or rule of Court requiring the lawyer to deliver an itemized account. The custom as to the form of account varies with different lawyers. However, whether an itemized statement is sent or not, the amount charged is determined usually by the considerations stated above.

"8. In Massachusetts it is not customary among the counsel of high standing to stipulate that remuneration shall be dependent upon the results of the litigation, so that if nothing be recovered in an action no remuneration is due. On the contrary, such a contract is illegal, as offending the law against champerty or maintenance. There is no doubt, however, that such contracts are not infrequently made, particularly in suits brought for personal injuries arising from negligence and the like. Even where no contracts to that effect are made, it is not uncommon for counsel actually to make the charge in accordance with the result; and if nothing is recovered, to make no charge, or a small charge, in such cases.

"9. There is no universal custom as to insisting upon payment on account at the outset of litigation, or payment from time to time during its progress, but it is common to have such payments made.

"10. Defendant may obtain security for costs from a plaintiff who is a non-resident of the State.

"11. No definite answer can be given to questions (*a*), (*b*), and (*c*), so far as fees of attorney and counsel are concerned, as these would depend

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very largely upon the standing of counsel and other considerations mentioned above, and in the case of (*a*) also largely upon whether the remuneration of plaintiff was to be in fact, or by agreement or practice substantially dependent upon the amount recovered.

"Further answering as to (*a*), the counsel and attorney fees would vary from $400 to $800, and for defendant from $250 to $500. The taxable costs recoverable by the plaintiff from the defendant would be in the neighbourhood of $50. Amounts paid to plaintiff's expert would not be taxable as costs. It is not probable that the case you mention could be tried in one day. The trial of such cases is far more expeditious in England than in Massachusetts.

"(*b*) This question leaves us in doubt upon the fact whether the verdict of $50 was a substantial victory for the plaintiff or not. Plaintiff's counsel and attorney fees might vary from $200 to $800. Defendant's counsel and attorney fees about the same. Plaintiff's taxable costs would be in the neighbourhood of $60.

"(*c*) It is impossible to answer this question without a knowledge of the amount involved.

II.—Court Fees.

"1. In the Superior Court a fee of $3.00 is charged upon the entry of each suit. These are the only fees paid to the Courts, with trifling exceptions.

"2. These fees are fixed by statute.

"3. See 1 and 2.

"4. Payment is made upon entry of the suit.

"5. The fees are less in Inferior Courts. There the fee upon entry is usually $1.00, and there are additional trifling fees.

"6. The payment is universal.

"7. Yes.

"8. As payment is made upon entry, no security is required."

The following answers by Mr. Monfeld Steven, Boston, also relate to the practice in Massachusetts :—

"In reply to the questions contained in the enclosed circular, I would say, first, that as a rule there is no distinction in the United States between barristers and solicitors. Every member of the bar acts as attorney and barrister in the same case, although there are some counsel who practically do only the work of barristers, and others who never go into Court.

"The compensation of lawyers is not fixed by statute or rule of

court, but in each case a lawyer makes a charge which, in his judgment, is fair compensation for the work done. The importance of the case, the amount involved, the standing of the counsel, the success or failure, and the amount of labour expended, are all elements which are considered in fixing the charge. The remuneration, therefore, varies with the subject in dispute, and with the stage in which the proceedings end. A large charge may be made in a case involving complex and difficult questions, or important as governing a principle of other cases, or affecting personal character, where the amount involved in the principal suit is small.

"The successful suitor is allowed costs against the unsuccessful suitor, and these costs are as a rule fixed by statute or by rule of Court. They are very small in amount as a rule, and by no means a complete indemnity for all the costs and expenses incurred by the successful litigant. They include a nominal fee for the writ, and the actual expenses paid the clerk, the sheriff, and the witnesses for their attendance. Where the witnesses are experts, the amount paid as expert fees is not allowed. In some of the States, as in New York, an allowance is made for counsel fees. In case of any disagreement as to the amount of costs, they are fixed by the clerk, and on appeal by the Court. In case of a dispute as to the amount of counsel fees, the dispute is determined in the ordinary way by suit. A lawyer is entitled to be paid a fair value for his services in excess o. the costs.

"In most cases the charge of the witness for attendance at trial is fixed by statute. In Massachusetts it is $1.50 a day, and 5 cents a mile for each mile travelled in going to and returning from the place of trial.

"There is no legal distinction between the remuneration in the different Courts. As a rule, of course, the more important matters are tried in the higher Courts, and the rate of remuneration there is for that reason higher.

"A lawyer is not required to deliver to his client a detailed bill of costs or a statement of items. The practice varies with different lawyers. I think clients generally prefer an itemized bill.

"In some States it is customary and legal to make remuneration depend on the result of litigation. In Massachusetts and in the Supreme Court of the United States it is illegal, and I do not think it is anywhere common among lawyers of the first standing.

"It is customary to ask for payment on account at the outset of litigation, and it is very common to require payment from time to time during its progress. There are rules under which plaintiffs can obtain

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security for costs, but as the costs are of small importance, the attempt is very rarely made, and the Courts are slow to require security from a person who is extremely poor. In most cases non-residents are obliged to give security.

"In reply to what the costs would probably be in the three cases put, much depends on the character of the counsel employed, and, in the last case, on the amount involved. In the first case, counting preparation and all the services of counsel in addition to the trial, I should think the case would probably cost the parties on each side in the neighbourhood of $750 for the plaintiff and $500 for the defendant; in the second case, about $1000; and in the last case, perhaps from $200 to $250.

"Referring to the questions under the second head, I should say, in reply to the first question, that Court fees are charged in contentious matters, and they are generally fixed by statute. I have already explained the nature of these costs, and have pointed out that they are very small in amount. They are not fixed according to the subject-matter in dispute. Those which are payable to the clerk for the writ or the entry of the case are paid when the writ is taken or the entry made. The expenses for record are paid after the case is ended. Court fees vary in the different Courts. The payment of the fees is not dispensed with. They are recovered by the successful party from the unsuccessful, and the Court or State obtains security for payment, in some cases by requiring the payment in advance, and in other cases the counsel employed is treated as responsible, and as a rule they are paid."

STATE OF ILLINOIS.

The practice in Chicago is thus stated by Messrs. Dupee, Judah, Willard, and Wolf, attorneys and counsellors of that city:—

I.—LEGAL REMUNERATION.

"1. Legal remuneration is regulated here both by custom and by special contract, as the case may be. There is no statute or rule of Court within the meaning of this question, as we understand it, although there are laws allowing attorneys' fees in certain cases (see hereinafter and copies of laws herewith). Special contracts are not uncommon, particularly in suits for damages for negligence.

"2. Remuneration varies both according to value and to stage at which proceedings end. In cases themselves of small consequence, but important in regard to other cases involving like questions or

affecting character, the attorney is considered at liberty to charge according to the importance to the client of the litigation, whether in or out of the particular case. If a special contract is made, both parties are of course bound by it.

"3. The successful suitor is allowed such Court costs as he has to pay, as against the unsuccessful suitor, and we enclose copies of our Cost Acts. The amount allowed, though but a small part of the expense incurred, does generally cover all that the successful party can get from the unsuccessful; but in such cases as injunctions and attachments, the party enjoined or whose property has been attached may, if successful, recover reasonable expenses, including attorneys' fees, from the defeated party, as a part of his damages on account of the attachment or injunction. In foreclosure cases it is customary, under special provisions of the mortgage, to collect, as part of the costs, all the expenses of the foreclosure, including attorneys' fees. In injunction cases, the damages may be recovered by supplementary proceedings in the injunction suit. Damages because of an attachment must be recovered in a separate suit. In suits for divorce and separate maintenance, the woman is generally allowed all costs, including attorneys' fees. Under certain circumstances, an attorney's fee is allowed in partition cases.

"4. The answer to this depends upon circumstances. There is nothing in the law to prevent the attorney collecting any excess, except that his fees must be limited to what is reasonable.

"5. The fees of witnesses are fixed by statute. In cases, however, of witnesses who are called as experts, as, for instance, physicians, real estate agents, in questions of valuation of property, etc., etc., the witness is generally paid an expert fee, which depends upon agreement and custom; but such fee is never, we think, taxed as part of the costs, although it might afterwards, in some cases, be recovered in an independent suit as part of the damages of the successful party.

"6. An attorney is generally considered at liberty to make somewhat higher charges for work in the upper or Superior Courts, but otherwise there is no distinction between the remuneration in different Courts.

"7. There is no statute requiring the attorney to deliver a detailed bill; but it is customary to do so, although there are many cases in which attorneys simply send in a lump charge without items, and there are some attorneys who seldom or never do anything else than send a lump charge without items.

"8. Yes; in cases of suits for damages for negligence, particularly against railways and large corporations, whether the lawyers be in good or bad standing. Such contract is legal in any case.

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"9. Yes.

"10. Yes; when the plaintiff is a non-resident, and in attachment and injunction cases, and we enclose copies of our statutes.

"11. (*a*) Plaintiff's attorneys would probably have a special agreement for somewhere from a fourth to a half of amount recovered, as a contingent fee. If no such contingency, plaintiff's costs, for preparation and trial, would probably be from $300 to $500. Defendant's costs would be about the same. Plaintiff's *taxable* costs would be only about $20; defendant's, about $10.

"(*b*) If no contingent fee, costs of plaintiff would run from $100 to $500, depending considerably upon wealth and social standing. Costs of defendant would be about the same. *Taxable* costs about as before.

"(*c*) Costs of plaintiff would be from $50 to $250, depending upon amount involved, and of defendant about the same. Plaintiff's taxable costs about $12; defendant's, about $4.

II.—Court Fees.

"As a general answer to these questions, we send you copies of our statutes.

"Special answer to 2: The Court fixes the amount of attorneys' fees in injunction cases and suits for wages, and suits for divorce and separate maintenance and partition.

"Special answer to 4: Costs in general are paid in advance.

"Special answer to 7: In nearly all cases Court fees are recoverable by the successful party from the unsuccessful. An exception is made, however, in favour of persons suing as paupers."

Note.—The chief of the statutes referred to are an Act to Revise the Law in Relation to Costs, February 11, 1874, and an Act concerning Fees and Salaries March 29, 1872, amended by an Act of March 28, 1874. Some of the fees may be cited: For administering each affidavit, 15 cents; for copy of bill of costs when required by either party, 25 cents; for putting any cases on the docket, 15 cents. "The clerk shall receive an advance fee of $10 when the record is filed, which shall be credited on the fees, and the clerk shall refund the same to the party entitled thereto when the costs are collected. For each summons, citation, subpœna, or other writ or process of Court, and sending the same, 25 to 35 cents.

State of MISSOURI.

The following answers are by Mr. Everitt W. Pattison, of the Bar of St. Louis:—

I.—Legal Remuneration.

"1. The legal remuneration is not regulated by any statute or rule of Court. There is no prevailing custom as to the remuneration of

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counsel. In some instances the client makes with his attorney an agreement as to fees; but ordinarily, the charge for litigated cases is fixed by the attorney himself at the termination of the litigation. Some attorneys regularly charge retainers; others never charge a retainer. The whole matter of the compensation of attorneys is in Missouri very much at sea. In a few specific actions, the statute provides for a recovery by plaintiff of an attorney's fee. For instance, in cases of partition of real estate, the fees of the plaintiff's attorney may be taxed against the parties of interest (or, in case of a sale of the land, may be paid out of the proceeds), each tenant in common, or joint tenant, paying such part of the fee as is proportioned to the interest he or she has in the land. But no fee will be taxed in favour of plaintiff's attorney in partition cases, unless the plaintiff shall have, prior to the institution of the suit, fixed by agreement with his attorney the amount of such fee. The Court may in its discretion reduce the amount so fixed.

"2. The answer to the preceding interrogatory has in a large measure answered this one. The basis upon which attorneys make their charges is by no means uniform. I think it may be stated, however, that the value of the subject in dispute is an important element in determining the amount. Yet clients are very prone to take the following position: If the amount involved is large, the client will often urge that the fee ought to be proportioned to the value of the subject in dispute, but that the attorney should base his charge upon the amount of work done. On the contrary, if the value of the subject in dispute is small, but the work involved great, the client is apt to suggest that he should not be charged in proportion to the work done. Some clients even insist that they ought not to pay their attorney for what they are pleased to call the educational part of his work. To illustrate: If an entirely new question is presented to an attorney (and the writer's experience has been that the questions presented are almost invariably new), time must be spent by the attorney in examining the law. Some clients object seriously to paying for the time thus spent, saying that it is the lawyer's business to know the law, and they ought not to be charged for his education. While there is a grain of truth in this, the fallacy of it is, of course, apparent to a lawyer. Yet I have heard the point seriously urged by business men of intelligence and standing.

"3. In the State Courts of Missouri the successful suitor is allowed the ordinary Court costs against the unsuccessful suitor. This does not include attorneys' fees, except in a very few specified cases. The costs are fixed by statute. In Missouri, in a litigated case, where no depositions are taken, the costs in the trial Court would probably not

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exceed $25 to $40. If depositions are taken by both sides at some length, such costs would probably amount to from $100 upward. By 'deposition' I mean the taking of the testimony of witnesses out of the territorial jurisdiction of the Court in which the action is pending.

"The Federal Court allows a small fee, never exceeding $20, to the successful suitor's attorney. This amount is so small as compared with the labour involved in cases in the Federal Court, it is almost never taken into consideration by the attorney in fixing his charge against his client.

"4. This question is fully covered by the answers to the preceding interrogatories.

"5. The uniform fee paid to witnesses in Missouri is 1.50 a day. And this fee is taxed as part of the costs to be paid by the unsuccessful suitor. It makes no difference how important may be the testimony, or how much technical skill and learning may be involved in his examination, the witness gets no more, no less, than 1.50.

"There is, however, no law preventing a party to a suit agreeing with an expert witness to pay him such compensation as may be mutually satisfactory for attending at court and testifying. But only 1.50 can be taxed as costs, whatever may be the sum paid the witness by the party calling him. If the client does not see fit to make such an agreement, he may nevertheless have compulsory process to secure the attendance of the expert witness, and may compel him to testify.

"6. The sixth interrogatory is fully answered in the preceding answers.

"7. There is no law or custom governing the matter in Missouri, and so far as I am aware (and my experience covers the Federal Courts, and the Courts of many of the States) no such law or custom exists anywhere in the United States. Some attorneys, however, make a practice of delivering itemized statements of the services rendered; and I think such course is usually more satisfactory to the client.

"8. In Missouri it is legal for an attorney to stipulate with his client that his fee shall be contingent, i.e. that no remuneration shall be received if the lawyer is unsuccessful, and that a much larger fee than ordinary shall be paid in case of success. This is often done in actions for personal injuries. In such cases the lawyer usually stipulates that he shall receive from one-fourth to one-half of the amount recovered in case of success, and nothing in case of failure. Some attorneys also agree with their clients to bear the costs of litigation in case of failure. Here, however, the law draws the line. While the agreement for a contingent fee is legal, and will be enforced by the Court, an agreement by the attorney to pay the costs of the litigation is considered champertous,

and will not be enforced. I think few respectable attorneys would ever make such an agreement.

"9. It is customary to insist upon payment on account at the outset of litigation, and upon payment from time to time during its progress. This custom is a growing one among the lawyers at this Bar. There are, however, many respectable attorneys who do not practise it, and who never ask compensation from a client of known solvency until the particular services are fully completed. It is my personal opinion that the former method of partial payment in advance and payments during the progress of the litigation is more satisfactory to the client, and it is certainly more satisfactory to the attorney, than the method of collecting the entire fee after the case is finally determined.

"10. The law on that point is contained in ss. 2915 to 2917 inclusive of the Revised Statutes of Missouri (A.D. 1889), which read as follows:—

"S. 2915. In all actions on office bonds for the use of any person, actions on the bonds of executors, administrators, or guardians, *qui tam* actions, actions on penal statutes when the penalty is given to the informer, and in all civil cases when the plaintiff or person for whose use the action is to be commenced shall not be a resident of this State, the plaintiff or person for whose use the action is to be commenced shall, before he institutes such suit, file with the clerk of the Court in which the action is to be commenced the written undertaking of some person, being a resident of this State, whereby he shall acknowledge himself bound to pay all costs which may accrue in such action; and if any such action shall be commenced without filing such undertaking, or depositing with the clerk of the Court in which said suit is brought, a sum of money sufficient to pay all costs that may accrue in the case, subject to be increased at any time, whenever the Court may deem proper and by its order of record require, the Court, on motion, may dismiss the same, unless such undertaking be filed or a sum of money be deposited before the motion is determined, and the attorney of the plaintiff shall be ruled to pay all costs accruing therein.

"S. 2916. If, at any time after the commencement of any suit by a resident of this State, he shall become non-resident, or in any case the Court shall be satisfied that any plaintiff is unable to pay the costs of suit, or that he is so unsettled as to endanger the officers of the Court with respect to their legal demands, the Court shall, on motion of the defendant or any officer of the Court, rule the plaintiff, on or before the day in such rule named, to give security for the payment of the costs in such suit; and if such plaintiff shall fail, on or before the day in such rule named, to file the undertaking of some responsible person, being a resident of this State, whereby he shall bind himself to pay all costs which have accrued or may accrue in such action, or deposit with the clerk of the Court in which said suit is pending a sum of money sufficient to pay all costs that have accrued or will probably accrue in the case, subject to be increased at any time, whenever the Court may deem proper and by its order require, the Court may, on motion, dismiss the suit unless such undertaking shall be filed or sum of money be deposited before the motion is determined.

"S. 2917. On an appeal from a justice's court, if the plaintiff be appellee, he shall not be required to give security for cost.

"The Court may, however, allow any person, of whose poverty it is

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satisfied, to sue as a pauper. In such case, the plaintiff is entitled to all necessary process and proceedings without fee, tax, or charge, and the Court may assign to such person counsel, who, as well as all other officers of the Court, must perform the duties without fee or reward. If plaintiff recovers judgment, the costs are taxed against the defendant. If plaintiff fails to recover, no costs are taxed.

"Many of the actions for personal injuries brought in our courts, in which the plaintiff's attorney has a contingent fee, are brought by persons who obtain leave of Court to sue as a pauper.

"11. Interrogatory 11 is a very difficult one to answer. In the case supposed under (*a*), a fee of $300 to $500 on each side would probably be charged. In the case supposed under (*b*), I cannot even give an estimate of the charge. It would depend so much upon the standing of the defendant, upon his pecuniary condition, upon the character of the testimony elicited, and various other circumstances entering into the question, that each case would have to be determined in reference to its own circumstances.

"In the case supposed under (*c*), the amount of the fee would largely depend upon the amount involved.

"The taxable costs in the cases above supposed would, if no depositions were to be taken (and by deposition I mean the testimony of witnesses out of the jurisdiction of the Court), amount to from $25 to $40.

"The distinction between barristers and solicitors does not obtain in Missouri, nor in the practice in the Federal Courts.

II.—Court Fees.

"1. Court fees are charged in cases of litigation. They are divided into the fees due the clerk, and the fees due the sheriff. In addition to this, there are the fees to the witnesses, the jury fees, and occasionally other specific amounts are taxed as costs. In Missouri a stenographer's fee is taxed as costs.

"2. The amount is fixed by statute, though in a few matters the amount of the costs is discretionary with the Court.

"3. The amount does not vary at all, and does not depend in any respect upon the value of the subject-matter in dispute.

"4. The costs are usually taxed and paid at the end of the litigation. But under special circumstances the Court will order certain costs to be taxed, and a fee-bill to issue for them, during the pendency of the litigation.

"5. The costs for like work are about the same in the Superior as in the Inferior Courts.

"6. Payment of such costs is never dispensed with, except where plaintiff is allowed to sue as a pauper and fails in his action.

"7. Such fees are in a sense recoverable by the successful party from the unsuccessful. But as there are few costs which go to the party as such, most of them being taxable in favour of the clerk, or the sheriff, or the witness, the successful party really has very little interest in the collection of the fee-bill. It sometimes happens, however, that the successful party has paid out money, as for the taking of depositions of witnesses residing out of the jurisdiction of the Court, or an allowance to a referee. Such money he is entitled to recover, and he then necessarily becomes interested in the collection of the fee-bill.

"8. The method of obtaining security for the payment of costs is set out in the sections of the statute copied above. The usual course of procedure is for either the clerk of the Court or the defendant in the action to file a motion that plaintiff be required to give security for costs. This is accompanied by an affidavit that plaintiff has no visible property subject to execution. The plaintiff may meet this by filing counter-affidavits or by oral testimony. If not contested, the order for security goes as a matter of course. If it is contested, the Court decides the question of fact, as it does any other question of fact, upon the preponderance of the evidence. If the order goes that the plaintiff shall furnish security for costs, he has the privilege either to deposit a certain amount of cash or to give a personal bond for the costs. If he is successful, and defendant is solvent, the deposit is returned to him or the bond cancelled, as the case may be. If unsuccessful, and bond has been given, such bond will be cancelled upon the payment by plaintiff of the costs; otherwise the costs will be collected from the sureties. If unsuccessful, and a deposit made, such deposit is appropriated to pay the costs. If the deposit exceeds the amount of costs, the balance is returned to plaintiff. If plaintiff is successful, but defendant is so insolvent that the costs cannot be collected from him, then the costs will be collected out of the deposit or by pursuing plaintiff's bond."

State of CALIFORNIA.

The following answers are by Messrs. Rothchild and Ach, San Francisco, California:—

I.—Legal Remuneration.

"1. Legal remuneration is not regulated by either statute or rules of Court, but by special contract, except in case of foreclosure of mortgage or lien, where a reasonable compensation is taxed as part of the judgment against the defendant.

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"2. With the above exception, remuneration is absolutely a matter of contract.

"3. Yes; the successful suitor is allowed the amount of legal fees paid to the officers of the Court and witness fees. In the event of disagreement, as the amount of fees chargeable is regulated by statute, the Trial Court fixes the amount of costs allowed. The amount allowed is not intended or allowed in the nature of a complete indemnity.

"4. A lawyer is entitled only to the compensation agreed upon for his services, or the reasonable value thereof, which, if disputed, is to be determined by a court or jury, in an action brought by him against his client.

"5. Yes; $2 per day, and 10 cents mileage.

"6. No.

"7. There is no law upon this subject. It is not customary to deliver such a bill; bills rendered in this State being subject in gross for services rendered. No statement is delivered, except a bill for the amount due for services rendered and the actual costs advanced.

"8. It is legal to make such a contract; but it is not common among lawyers of good standing.

"9. It is customary to ask some retainer at the outset, and thereafter payment from time to time.

"10. Yes; in the event that the plaintiff is a non-resident of the State or a foreign corporation, a bond in the sum of $300, to cover costs, may be required.

"11. (*a*) The actual taxable costs would be: $6, paid the clerk upon filing the complaint; $1.50, service of process; $24, jury fees; $4, trial fees; $12, witness fees; $12, fee for stenographic reporter for reporting trial; and a reasonable fee for conducting the case on either side would be $250.

"(*b*) The same costs would be involved, except that each witness is allowed $2 per day, and a reasonable attorney's fee in such a case on either side would be $500.

"(*c*) The costs in such a case would be $12, and the amount of counsel fee would depend largely upon the amount involved.

II.—Court Fees.

"1. No.

"2. Fixed by law.

"3. No. Uniform throughout the State, regardless of amounts involved or the value of the subject-matter.

"4. In advance and insisted upon, except that trial fees and jury fees are paid while the trial is in progress.

"5. Yes; but the difference is not material.

"6. Payment of fees is dispensed with only when suit is brought in *in formâ pauperis* upon affidavit of plaintiff, and order of the presiding judge.

"7. Yes; by the successful.

"8. There are no Court costs in prosecutions brought by the people or the State, and no other costs incurred, except as indicated in former answers, and these are paid in advance."

MODES OF LEGISLATION IN THE BRITISH COLONIES.

In August, 1895, Lord Herschell, the President of the Society, in a letter to Mr. Chamberlain, Secretary of State for the Colonies, enclosed a series of questions by means of which it was sought to obtain information respecting the common and statute law of the several colonies, the methods of legislation, the publication, revision, and consolidation of statute law, and matters connected therewith.

These questions were transmitted by Mr. Chamberlain to the respective Colonial Governments.

A first instalment of the replies received from Colonial Governments was published in the first number of the *Journal*. Since that time the replies now printed have come to hand. It is hoped that the Colonial Governments which have not yet responded to the invitation will forward their replies in time for insertion in the next number of the *Journal*.

The questions addressed to the Colonial Governments were as follows:—

QUESTIONS WITH RESPECT TO THE STATUTE LAW OF THE BRITISH COLONIES.

I.—Common Law as the Basis of Statute Law.

(*a*) What is the common law of the colony? Under what circumstances and by whose authority was it introduced?

(*b*) Is there any law applying exclusively to particular races or creeds?

II.—Statute Law.

(*a*) Of what does the statutory or enacted law of the colony consist? To what extent is it embodied in charters, regulations, Orders in Council, Ordinances, or Acts?

(*b*) To what extent do the statutes of the United Kingdom operate in the colony by virtue of either—

(i.) Original extension of English law to the colony;

(ii.) Express provisions of any Order in Council or charter; or

(iii.) Express adoption by the legislature of colony?

(*c*) Is the statute law of any other colony in force in the colony? (This may happen where one colony has been severed from another.)

(*d*) Is any code or other body of enacted law of non-British origin in force in the colony?

III.—Methods of Legislation.

(*a*) By whom are drafts of legislative measures prepared? Is there any official draftsman? If so, by whom is he appointed, to whom is he responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the legislative body?

(*b*) What is the constitution of the legislative chamber or chambers through which measures have to pass? (A reference to statute law, or charter, or Order in Council, or to any recognized text-book will suffice.) If there are two chambers, may measures be introduced in either?

(*c*) Are draft measures published before introduction, or before any other stage? If so, under what rules?

(*d*) Through what stages does a measure pass before it becomes law?

(*e*) Is any opportunity afforded for referring measures, while in course of passage through the legislature, to any special officer or committee on points of form?

(*f*) Have any steps been taken to secure uniformity of language, style, or arrangement of statutes either by means of a measure corresponding to "Brougham's" Act (13 & 14 Vict. c. 21), or to the Interpretation Act, 1889 (52 & 53 Vict. c. 63), or by official instructions or otherwise?

(*g*) Is there an annual session of the legislature? Are there any fixed or customary periods of session?

(*h*) How are the Acts or Ordinances of the colony numbered or distinguished? Are they numbered by reference to the calendar year, or to the regnal year, or in any other way? Is it the practice to confer for convenience of citation a "short title" on each Act or Ordinance? How long has this practice been followed?

(*i*) Are private Bills (if any) treated separately, and under different conditions from public Bills? On what principle is the line drawn between public and private Bills? Are private Acts or Ordinances separately numbered?

(*j*) Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum?

IV.—Publication of Statutes.

(*a*) In what manner and under what authority are statutes promulgated? What evidence is accepted of a statute having been duly passed?

(*b*) In what form or forms and under what authority are statutes printed for publication?

(*c*) Are the statutes of each session published in a collected form at the end of the session?

(*d*) Are the periodical volumes of statutes accompanied by (1) an index and table of contents, (2) a table showing the effect on previous legislation?

(*e*) What collective editions (if any) of the statute law of the colony have been published, and whether by the Government or by private enterprise? Are these or any of them periodical? Do such editions comprise those Acts of the United Kingdom in force in the colony?

(*f*) Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Public Utility"?

(*g*) How are private Acts published?

V.—Revision of Statutes.

(*a*) Have any steps been taken for the revision and expurgation of the statute law, whether periodically or otherwise? What machinery, if any, exists for this purpose?

(*b*) Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition? Is it published at periodical intervals, or how otherwise? Are the contents arranged alphabetically, chronologically, or on any other principle?

VI.—Indexing of Statute Law.

Is there any general index to the statute law of the colony? If so, on what principle is it arranged and after what interval is it revised? Does it include both public and private Acts or Ordinances, and the statutes of the United Kingdom which are in force in the colony? Is it accompanied by any tables showing how each statute has been dealt with? What is the date of the latest edition?

VII.—Consolidation and Codification.

(*a*) What steps have been taken to consolidate the whole or particular parts of the statute law, or to codify any branches of the law?

(*b*) Does any machinery exist for this purpose? Is the work now in progress?

(*c*) What "codes" are now in force in the colony? When and by whom were they prepared, and on what materials were they based?

VIII.—Subordinate Legislation.

What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation, such as rules or orders made by the Governor, or a minister or department under the express authority of Statute or Ordinance? Is there any, and what collection of, or index to, such subordinate measures?

To these questions the following further replies have been received by the Society:—

FIJI.[1]

I.—Common Law.

(*a*) The common law of the colony is that which was in force in England on January 2, 1875, *i.e.* the date when the colony received its charter and obtained a local legislature.

Such law was to be in force so far only as the circumstances of the colony and its inhabitants and the limits of the colonial jurisdiction permitted, and to be subject to any existing or future ordinances of the Colonial Legislature.

Before the passing of the Supreme Court Ordinance No. XIV., 1875, which was the authority (ss. 26–28) for the introduction of the English common law into the colony, certain laws, ordinances, proclamations, and regulations had been enacted by the Provisional Government of the Fiji Islands prior to the constitution of the colony. These laws were mostly derived from the enactments in force in certain of the Australian colonies, principally New South Wales.

Such of these laws as were temporarily continued appear in the schedule to Ordinance II. of 1875. This law, having served its purpose, was repealed in 1893, and the law of the colony may now be said to be derived entirely from ordinances passed by the Colonial Legislature and from statutes enacted by the Imperial Parliament and applied to the colony.

(*b*) There are no laws applying to particular creeds, but those applying exclusively to particular races are not uncommon.

The relations of the native Fijians, *inter se*, are governed by the Native Regulations, made by the Native Regulation Board under the Native Affairs Regulation Ordinance (No. XXXV. of 1876). These

[1] Prepared by J. S. Udal, Esq., Attorney-General.

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regulations, when approved by the Legislative Council, have the force of law. Two courts, both of summary jurisdiction, are appointed for the trial of cases that may arise under such regulations. These consist of a *District Court*, presided over by a native stipendiary magistrate having jurisdiction over a limited area, and held at intervals of not less than two months in places appointed by the Governor; and the *Provincial Court*, also of limited jurisdiction, presided over by the European stipendiary magistrate and one or more native stipendiary magistrates, and held in each province every three months.

An appeal lies from the District to the Provincial Court, but none from the Provincial Court. The Attorney-General has power to submit the decision of any native stipendiary magistrate, in certain cases, if he sees fit, for revision by the Supreme Court.

Certain districts of Viti Levu—which, owing to the then recent disturbances amongst the natives, were exempted from the jurisdiction of the Supreme Court by virtue of the powers given to the Governor under the Supreme Court Ordinance, 1875—are still under the jurisdiction of the Resident Commissioners appointed by the Governor, but such commissioners have no jurisdiction over white persons other than as stipendiary magistrates.

It has been recently proposed to repeal these provisions, and bring the districts in question under the jurisdiction of the Supreme Court.

Important special laws apply to natives, such as proceedings for divorce, the settlement and possession of native lands, and the assessment and collection of native taxes, and their commercial dealings with non-native persons. Stringent and prohibitive liquor laws are imposed upon Fijians, in common with natives of Africa, India, Malaysia, and Polynesia, including half-castes.

Much special legislation relates to the immigration, employment, and return to their homes of Indian and Polynesian labourers and the administration of their estates, and to the employment of Fijians as labourers, all of which has been recently consolidated. Certain restrictions are also imposed on the emigration of natives and on the departure of Polynesian labourers from the colony.

A recent Marriage Ordinance (No. II. of 1892), applicable to Indian immigrants, is borrowed from similar provisions obtaining in certain of the coolie-importing Crown colonies.

There are also various minor enactments relative to the good and well-being of the mixed native races of the colony.

Exceptional legislation was conferred upon this colony in 1894, under which certain persons, not being her Majesty's subjects or the subjects or citizens of any civilized power when brought to Fiji as

prisoners by her Majesty's naval officers, may be received and detained during her Majesty's pleasure, and the legality of such detention cannot be called in question.

II.—Statute Law.

(*a*) The statutory law of the colony consists of—

(1) Ordinances passed by the Governor with the advice of the Legislative Council.

(2) Native regulations (applicable only to Fijians and in certain cases to other Polynesians) passed by the Native Regulation Board and approved by the Legislative Council.

(3) Imperial statutes which apply to the colony.

(4) Orders in Council.

The statutory law of the colony takes its authority from the Royal Charter granted to the colony on January 2, 1875, under which a legislative council is appointed, with power to legislate, subject to any instructions from the Crown.

The power to legislate is further subject to the right of the Crown to disallow any ordinance, or to legislate for the colony, either through parliament or by Order in Council.

(*b*) (1) By the Supreme Court Ordinance (No. XIV. of 1875), the statutes of general application (together with the common law and rules of equity) which were in force in England at the date when the colony obtained a local legislature, that is to say, on January 2, 1875 (the date of the charter), were held to be in force in the colony.

All such Imperial laws, however, were to be in force only so far as the circumstances of the colony and the limits of colonial jurisdiction permitted, and subject to any then existing or any future ordinances.

(2) By the above charter the Crown, which thereby granted a Legislative Council to the colony, reserved the right to legislate for the colony whenever it might appear for its peace, good order, and good government, either through Parliament or by Order in Council.

As an instance of such legislation may be mentioned the Fiji Marriage Act, 1878 (41 & 42 Vict. c. 61), passed for the purpose of validating marriages celebrated in Fiji prior to its creation into a colony.

(3) Beyond the adoption of the existing English statutes at the inauguration of the colony by the Supreme Court Ordinance, 1875, as above mentioned, certain ordinances of later date have been from time to time introduced from the Imperial Statute Book, with such alterations as may be necessary to adapt them to local circumstances.

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Amongst the most important of these may be instanced—
The Married Women's Property Act, 1882.
The Bills of Exchange Act, 1882.
The Bills of Sales Act, 1878.
The Bankruptcy Act, 1883.
The Criminal Law Amendment Act, 1885.

Other important statutes of recent years passed by the Imperial Legislation for application to the colonies are in force, either by imperial enactment or by express adoption, such as—
Colonial Prisoners' Removal Act, 1884.
Colonial Courts of Admiralty Act, 1890.
Colonial Probates Act, 1892.
Merchant Shipping Act, 1894.
Colonial Boundaries Act, 1895.

The Pacific Islanders' Protection Acts, 1872 and 1875, under which the office of the Court of the High Commissioner for the Western Pacific is constituted, relate specially to this colony, to the Supreme Court of which, under the Western Pacific Orders in Council (revised and consolidated, 1893), an appeal lies from the High Commissioner's Courts.

It was under these Acts that Fiji was first legally constituted one of the Australasian colonies.

(*c*) There is now no statute law absolutely pertaining to any other colony in force in this colony.

(*d*) There is no code or other body of enacted law of non-British origin in force other than may be said to exist from the retention and observance of such of the native customs as may be continued and preserved in the Native Regulations, which, as before mentioned, are restricted to the Fijian race.

III.—Methods of Legislation.

(*a*) The drafts of legislative measures are generally prepared by the Attorney-General, there being no other official draftsman, though sometimes the various heads of departments, in more or less collaboration with the Attorney-General (who may then be said to be mainly responsible for the legal form of the enactments), may draft and introduce measures of special legislation, referring to their own particular departments. Sometimes, however, the Governor may draft and introduce a measure upon a subject which he has under his special cognizance. Fiji being a Crown colony without any representative government, the Governor practically initiates all legislation; and it is the duty of the Attorney-General to introduce each measure,

with the exceptions above mentioned, so that practically there is little or no legislation introduced by the non-official or private members. In other words, the right, though it may exist, is seldom or never exercised; and anything in the shape of a money bill, or any matter affecting the revenue, can only be proposed by the Governor.

(*b*) There is but one chamber, called the Legislative Council. This council consists of the Governor and certain official and non-official members. The number of each class does not appear to be limited, otherwise than that there must not be at any time less than six or more than twelve of the official and unofficial members combined, and of such number at least one-half must be official members. The *quorum* of Council is four members besides the Governor, or member presiding. The unofficial class, as well as the official, is nominated by the Governor, and, after being confirmed, hold their office for life or during residence in the colony, though absence for a certain time without leave will vacate a seat in Council.

(*c*) Draft measures are not published before introduction; but when it is considered expedient that the subject-matter of a measure should be before the public for some interval before it is passed into law, or when the opinion of the *outside public* is invited on the matter, the ordinance, after having passed the first reading, is published in the *Royal Gazette* for general information.

(*d*) The bill or draft ordinance, after having been introduced, passes the first reading. The subsequent stages are, the second reading, committee, third reading, and final passing of the measure.

A committee of two members is usually nominated to present the bill to the Governor for signature, which being done, the measure becomes law.

(*e*) There is no reference of a bill to any special officer or committee, other than the Committee of Council.

(*f*) For the reasons given above, the necessity for official instructions as to uniformity of language is not much felt; but the colony has a General Interpretation Ordinance of its own (No. VII. of 1875), and of course Brougham's Act (13 & 14 Vict. c. 21), being a statute of general application at the time of the granting of the charter to Fiji, is also the law of the colony.

(*g*) There are two principal sessions, one in the spring and another in the autumn of each year. Formerly the Legislature met at fixed monthly intervals, and later at intervals of three months; but of recent years it has been the practice of the Governor to summon the Council at the times most convenient for the passing of the measures in hand, it being felt that the summoning of members, sometimes from distant

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parts of the colony, on occasions when there might be little or nothing of importance to transact, imposes unnecessary burdens upon them.

(*h*) The ordinances of the colony are all numbered in the order in which they receive the assent of the Governor, with the addition of the year in which they pass, thus "No. I., 1889" represents the first measure that became law in that year. Where an ordinance requires it, it is the practice to confer a "short title." This practice has existed from the commencement of the colony.

(*i*) Practically, for the reasons given in answer to question III. (*a*), there are no private bills. All bills coming before Council are treated alike, so far as procedure and numeration go.

(*j*) No practice exists of accompanying a measure, on its introduction, by an explanatory memorandum.

IV.—Publication of Statutes.

(*a*) Unless under the circumstances mentioned in III. (*e*), the measures are not published until they have received the Governor's assent, when they are printed in the *Royal Gazette* for general information. The Governor's signature, and the date appended upon which it was affixed, are accepted as evidence of the measure having duly become law.

(*b*) Besides the publication in the *Royal Gazette* as above mentioned, the ordinances are printed and published at the Government printing office in a separate form for general purposes, but uniformly with those in the *Royal Gazette*. These are printed under the authority of the Governor, the number of copies required being notified by the Colonial Secretary.

(*c*) Annual volumes of the ordinances passed are made up at the end of each year.

(*d*) The volumes are accompanied by an index of ordinances arranged alphabetically according to titles or subject-matter, but otherwise contain no table of contents. There is no table showing the effect of the year's legislation upon previous ones.

(*e*) The only collective edition of the statute law of the colony that has been published is an 8vo volume of 539 pages, containing the ordinances from the commencement (September 1, 1874) until the end of the year 1878. This was printed in Sydney in 1880, at the expense of the Government.

(*f*) There is no edition of "Selected Statutes" in the colony.

(*g*) There are no private ordinances properly so called (see answer to III. (*a*)).

V.—Revision of Statutes.

(*a*) No steps have been taken for revision and expurgation of ordinances, nor does any machinery exist for that purpose.

(*b*) No edition of revised ordinances has been published, with the exception of the 8vo volume already alluded to (IV. E.), published in 1880, containing the ordinances from 1175 to 1878 inclusive.

VI.—Indexing of Statute Law.

The only index of statute law that at present exists in the colony is a thin folio volume (n. d.), of about a dozen pages, containing a general index to the ordinances from 1875 to 1886, arranged alphabetically under the subject-matter—a mere skeleton table of contents.

It is intended, however, to bring out, under the auspices of the Attorney-General, an amplified and exhaustive index of the existing ordinances, somewhat after the manner of Oliver's index to the New South Wales Statutes.

VII.—Consolidation and Codification.

Although no attempt to codify any particular branch of the law has yet been made, several parts of the statute law have been consolidated of late years. For instance, the labour laws are now fairly complete, arranged under their several categories of Indian, Polynesian, and Fijian.

Also several more or less consolidated portions of English commercial and general law has been brought into the recent legislation of the colony, but much yet remains to be done in this direction.

VIII.—Subordinate Legislation.

Rules and orders made by the Governor or Governor in Council, regulations made by the Native Regulation Board, and rulings laid down by the Commissioners of Customs, are published from time to time in the *Royal Gazette*, wherein they are indexed in due course in the volume published at the end of each year, and summarized in the annual Blue-Book of the colony under the chapter dealing with *Legislation*.

BRITISH HONDURAS.[1]

I.—Common Law.

(*a*) According to Forsyth, p. 26, British Honduras was acquired by cession in 1870. I think, however, it would be more accurate to say that it was acquired partially by cession and partially by settlement.

[1] Prepared by Leslie Probyn, Esq., formerly Attorney-General.

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At the present time, by virtue of s. 3 of Chap. 7 of the Consolidated Laws, "the common law of England and all statutes of the Imperial Parliament in abrogation or derogation, or in any way declaratory of the common law," are in force in the colony, "in so far as the local jurisdiction of the Court and local circumstances reasonably permit."

By s. 6, Imperial statutes relating to bankruptcy, customs, and excise are excluded from operating in the colony, as also are all laws relating to or regulating any trade, profession, or business. The Consolidated Laws above referred to were brought into operation by Ordinance 7 of 1888, on December 15, 1888; before this date, however, the common law of England had been permanently adopted as the basis of the colonial law by earlier laws.

(*b*) By s. 5 of Chap. 103 of the Consolidated Laws, areas of land may be reserved for Indians or Caribs. Where this is done, those living within the reserved areas hold their lands under regulations made by the Governor in Council, with the sanction of the Secretary of State.

Save as above, no law applies to any one race or creed.

II.—Statute Law.

(*a*) The statute law of the colony was consolidated in 1885–87. The law thus consolidated was brought into operation by Ordinance 7 of 1888, and supersedes (subject to certain saving clauses) all previous *colonial* statute law.

Annexed to the Consolidated Laws is a schedule containing a list of the Imperial laws which are probably in force in the colony. The schedule does not, however, form part of the law, and consequently has no greater weight than as an expression of the opinion of the commissioners by whom the law was consolidated.

The Consolidated Laws, although only seven years in operation, have been greatly altered by recent legislation.

Previous to 1870 laws were made by a Legislative Assembly. Since 1870 laws have been made by a Legislative Council. By Ordinance 14, 1892, the unofficial members are given a majority over the official members.

Both official and unofficial members of the Legislative Council are appointed by the Crown.

The enacted law of the colony consists exclusively of the Ordinances passed by this Legislative Council, and assented to by her Majesty. The assent is given by the Governor on behalf of her Majesty, but the latter may disallow any ordinance, either by an Order in Council, or through one of her principal secretaries of state.

(*b*) (i.) See above, answer to I. (*a*).

ii. and iii. The Foreign Enlistment Act, 1870, is applied to the colony by Chap. 6, s. 8, of the Consolidated Laws.

The Extradition Acts of 1870–73 are applied by Chap. 47 of the Consolidated Laws; the Petition of Right Act, 1860, is applied by s. 314 of Chap. 13, ibid.; and the older Companies Acts by Chap. 87, ibid. The above are examples of the openly expressed adoption of Imperial statutes by the Colonial Legislature. In addition to the above examples of incorporation by reference, considerable portions of English statute law have been inserted in the Consolidated Laws. Thus the Statutes of Limitation (see Chaps. 19 and 20), the Statute of Frauds (see Chap. 21), the Bills of Sale Act of 1878 (ibid.), the Judicature Acts (see Chap. 8, ss. 29–35), the Law of Inheritance (see Chap. 44), Trusts (see Chap. 45), are all instances of wholesale adaptation of the Imperial Statute Law.

The Colonial Courts of Admiralty Act, 1890, has not been applied to the colony.

(*c*) No statute law of any other colony is in force, nor

(*d*) Any code or other body of enacted law of non-British origin.

III.—Methods of Legislation.

(*a*) The Attorney-General of the colony drafts all bills. He has no staff.

No example exists of a private bill being introduced by an unofficial member of the Legislative Body.

(*b*) The constitution of the legislative chamber is fixed by Chap. 2 of the Consolidated Laws, as amended by Ordinance 14 of 1892.

(*c*) Draft measures are almost invariably published in the *Gazette* before introduction.

(*d*) The stages of legislative measures are as follows: Notice of first reading, first reading, second reading, committee, third reading, assent by the Governor on behalf of her Majesty.

By a suspension of the standing orders of the Legislative Council, it is possible for a measure to pass through all stages at one sitting of the Legislative Council.

(*e*) There is no reference to any special officer or committee during the passing of a bill.

(*f*) Chap. 1 of the Consolidated Laws secures some uniformity. The Interpretation Act, 1889, has not been adapted to the colony.

(*g*) There is an annual session, but there is no fixed period of session.

(*h*) Ordinances are distinguished by numbers quoted before the

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calendar year in which they are passed, *e.g. Ordinance* 1 *of* 1896. Short titles have been employed for about fifty years.

(*i*) There are no private bills.

(*j*) No explanatory memorandum is issued with a bill.

IV.—Publication of Statutes.

(*a*) Ordinances, when passed, are published in the *Government Gazette*, are preserved in the offices of the Supreme Court, and of the Executive and Legislative Council. Copies are distributed to various functionaries. By s. 9 of Chap. I. of the Consolidated Laws, all ordinances are deemed to be public ordinances, and are judicially noticed as such. Copies purporting to be printed by the Government printer are received in evidence.

(*b*) Statutes, when passed, are printed in the *Gazette.*

(*c*) The statutes of each session are printed in a collected form.

(*d*) The volumes of statutes are accompanied by an index and table of contents, but not by a table showing the effect on previous legislation.

(*e*) See II. (*a*).

(*f*) There is no edition of selected statutes.

(*g*) There are no private acts.

V.—Revision of Statutes.

(*a*) No such machinery exists. The consolidation referred to in II. (*a*), *supra*, was performed by a commissioner[1] specially appointed for that purpose.

(*b*) The only edition of revised statutes is the collection of Consolidated Laws mentioned in II. (*a*), *supra.* The contents are grouped together in parts dealing with kindred subjects; there is also an index.

VI.—Indexing of Statute Law.

There is no general index.

VII.—Consolidation.

See II. (*a*) and V. (*a*).

VIII.

Rules and Orders made by the Governor are prepared by the Attorney-General, and, when passed, are published in the *Gazette.*

Rules made by the Boards of Health—the District Boards, the Harbour Master, the Collector of Customs, the Education Board—are prepared by the body or official making the rules. In nearly all cases the assent of the Governor is required to give validity to the rules, and consequently the latter are almost invariably revised by the Attorney-General.

The measures to which reference is made are not collected in any systematic form.

[1] W. Meigh Goodman, now Attorney-General of Hong Kong.

LAGOS.[1]

I.—Common Law.

(*a*) The common law of the colony is the common law of England. It was introduced into the colony in the year 1876, when the settlements of Lagos and the Gold Coast were erected into a colony called the "Gold Coast Colony," separate and distinct from the West African Settlements, of which they had previously formed part. The Supreme Court Ordinance, 1876, which provided for the administration of justice in the new colony, provided that the common law of England should be in force in the colony. In 1886, Lagos was separated from the Gold Coast Colony, and erected into a separate colony; and by an ordinance passed in that year, the laws of the Gold Coast Colony, which had been hitherto in force in Lagos, are to remain in force in the new colony of Lagos. Under this the common law of England remains the common law of the colony of Lagos.

(*b*) There is no law applying to particular races or creeds, but by the Supreme Court Ordinance, 1876 (s. 19), native laws and customs, "not being repugnant to natural justice, equity, and good conscience, nor incompatible either directly or by necessary implication with any enactment of the Colonial Legislature," are to be "applicable in causes and matters where the parties thereto are natives of the colony," and also in causes and matters between natives and Europeans, where it may appear to the Court that substantial injustice would be done to either party by a strict adherence to the rules of English law."

II.—Statute Law.

(*a*) The statutory or enacted law of the colony consists of ordinances passed by the Legislative Council of the colony. Power is reserved by the Crown in the Letters Patent constituting the colony to legislate by order of the Queen in Council, and a few such Orders have been made.

(*b*) The statutes of general application in force in England on the 24th day of July, 1874, are by the Supreme Court Ordinance, 1876 (s. 14), in force in the colony. The 24th day of July, 1874, is the date on which the Gold Coast Colony, which then comprised Lagos, obtained a local legislature.

(*c*) The ordinances, rules, and orders of the Gold Coast Colony passed and made prior to the 13th day of February, 1886, are in force

[1] Prepared by T. C. Rayner, Esq. (Chief Justice), Geo. Stallard, Esq. (Queen's advocate), F. Rohrwayer, Esq. (police magistrate), and W. G. Ambrose, Esq. (district commissioner).

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in Lagos, Lagos having been separated from the Gold Coast Colony in 1886, as previously explained in Answer I. (*a*).

(*d*) There is no code or other body of enacted law of non-British origin in force in the colony.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are usually prepared by the Queen's advocate, but occasionally other officials draft measures relating to matters appertaining to their own departments of government.

There is no official draftsman.

(*b*) The legislature of the colony consists of the Legislative Council, which is appointed by the Crown, and consists, under the Royal Instructions (dated the 13th day of January, 1886), of the Governor, the Chief Justice, the senior military officer for the time being in command of the Queen's regular troops within the colony, the Colonial Secretary, the Queen's advocate and the Treasurer, who are styled official members, and also such other persons, styled unofficial members, as the Queen may from time to time appoint. At present there are four unofficial members of the Council.

There is only one legislative chamber.

(*c*) Draft measures are not regularly published, but occasionally bills relating to matters of public interest, during their passage through the Legislative Council, are published in the *Government Gazette* or local newspapers; but there are no rules as to this.

(*d*) A measure is read three times, and goes through a committee of the whole Council, and is assented to by the Governor in the Queen's name, before it becomes law. Further, the Queen, in the Letters Patent constituting the colony (dated the 13th day of January, 1886), has reserved the power of disallowing, through a Secretary of State, ordinances passed by the Legislative Council.

(*e*) There is no opportunity afforded for referring measures, while in course of passage through the legislature, to any special officer or committee on points of form.

(*f*) The Royal Instructions, before referred to (paragraph 22), contain regulations for securing some uniformity of style and arrangement of ordinances. There is also an "Interpretation Ordinance" passed in 1876, very similar to Brougham's Act (13 & 14 Vict. c. 21), from which it was to a large extent borrowed.

(*g*) There is no regular session of the legislature, nor any fixed or customary periods of session. The Governor summons the Legislative Council to meet, when necessary.

(*h*) The ordinances of the colony are numbered consecutively by reference to the calendar year in which they were passed, commencing in each year with the number one. Each ordinance usually has a short title, and this practice has been followed since 1874, when the colony first had a legislature.

(*i*) No private bills have ever been passed in this colony, but they would be treated in an exactly similar manner to public bills.

(*j*) It is not the practice to accompany a measure on its introduction by an explanatory memorandum.

IV.—Publication of Statutes.

(*a*) Ordinances, when passed, are promulgated, under the authority of the Governor, by publication in the *Government Gazette*, and copies are also printed for the use of the public. The production of a printed copy of an ordinance is taken as evidence that it has been duly passed, but three "authenticated" printed copies of every ordinance are kept in the colony. These copies are "authenticated" by being compared by the clerk of the Legislative Council with the original bill which was passed in the Council, and the clerk then signs it as being a correct copy. The seal of the colony is put on it, and it is signed by the Governor. One copy is deposited with the Chief Justice, another with the Colonial Secretary, and the third with the clerk of the Council. Each of these officials is also required to endorse, in his own handwriting, the fact that the Queen has either allowed or disallowed the ordinance, as the case may be, upon the authenticated copy in his possession.

(*b*) Ordinances are printed singly, as soon as passed, by the Government, and sold to the public.

(*c*) The ordinances passed in each year are reprinted and published in a collected form at the end of the year. Only two such collections have, however, as yet been issued in this colony—those for the years 1894 and 1895.

(*d*) The collection issued in 1894 has a table of contents prefixed, but the one issued in 1895 has no such table. Neither collection has an index, nor a table showing the effect on previous legislation.

(*e*) Two collective editions of the ordinances of the colony have been issued. Both were prepared under the authority of the Government, and were published by the Government.

The first was published in 1887, and was compiled by Mr. W. Brandford Griffith, then a district commissioner of the Gold Coast colony, but now the Chief Justice. It contained the ordinances common to both the Gold Coast colony and the colony of Lagos,

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these colonies only having been separated the previous year (*vide* answer to question I. (*a*)).

The second was published in 1894, and contained the ordinances of the colony up to the end of 1893. It was compiled by Mr. George Stallard, the Queen's advocate, and Mr. E. H. Richards, a District commissioner of the colony.

Neither of the above are periodical editions, and neither comprise those Acts of the United Kingdom in force in the colony; but the edition of Messrs. Stallard and Richards contains in the appendix thirteen Acts of the United Kingdom which relate to colonial affairs; such, for example, as the Foreign Enlistment Act and the Colonial Probates Act.

(*f*) There is no edition of selected statutes or ordinances of the colony corresponding to Chitty's "Statutes of Public Utility."

(*g*) There are no private Acts in this colony.

V.—Revision of Statutes.

(*a*) Steps have been taken from time to time, at irregular intervals, for the revision and expurgation of the statute law.

Three such steps have been taken within the last twenty years, in 1877, 1886, and 1893. On each occasion a large number of ordinances which had fallen into disuse, or which were regarded as spent, were expressly repealed.

On the last occasion the revision was made for the purpose of facilitating the preparation of the edition of the ordinances made by Messrs. Stallard and Richards, before referred to in the answer to question IV. (*e*).

No machinery exists for the purpose of revising the statutes.

(*b*) There is no edition of revised statutes other than the edition of Messrs. Stallard and Richards, before referred to in answer to question IV. (*e*).

The contents are arranged chronologically.

VI.—Indexing of Statute Law.

There is no general index to the statute law of the colony. There is an index of the Procedure Ordinances (civil and criminal), compiled im 1888 by Sir Smalman Smith, the then Chief Justice.

VII.—Consolidation and Codification.

(*a*) No attempt has yet been made to consolidate the whole or any part of the statute law of the colony.

(*b*) No machinery exists for this purpose.

(*c*) There are no codes in force in the colony.

VIII.—Subordinate Legislation.

Certain ordinances give the Governor power by Order in Council to make rules and regulations under them. There is no machinery for the preparation of such orders, but they are usually drafted by the head of the Government department concerned with the matters dealt with in such rules and regulations, and are usually sent to the Queen's advocate for revision.

There is a collection of such orders in an appendix to Messrs. Stallard and Richard's edition of the ordinances before referred to, and a collection of those made during the year is printed at the end of the collection of ordinances published at the end of each year, referred to in the answer to question IV. (*c*).

There is no index to these orders.

BRITISH NEW GUINEA.[1]

I.—Common Law.

(*a*) The common law of England prevails. It was introduced by "The Courts and Laws adopting Ordinance (Amended) of 1889," being Ordinance No. VI. of 1889.

(*b*) The following laws apply to natives :—

(i.) "The Arms, Liquor, and Opium Prohibition Ordinance, 1888," being Ordinance No. I. of 1888, forbids certain articles being supplied to persons not of European descent.

(ii.) "The Land Regulation Ordinance No. II. of 1888" forbids private persons from acquiring any interest in land from aboriginal natives of the Possession; and Ordinance No. VIII. of 1889, which amends the last-named ordinance.

(iii.) "The Native Board Ordinance of 1889," being Ordinance No. IX. of 1889, provides for appointment of Native Regulation Boards, with power to make regulations applicable solely to "natives." The said board have made the following regulations :—

In 1890, Preliminary; magistrates' tokens; native magistrates' courts; evidence; language and interpretation; regulating imprisonment; forbidden acts and their punishment; serious crimes; civil claims; magistrates' reports; stealing; injuries to persons; burial of the dead.

In 1891, Amending; lying reports and threatening language; destroying cocoanut trees; adultery.

In 1892, Village constables.

[1] Prepared by Mr. Francis Winter, Chief Judicial Officer of the colony.

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In 1893, Property of deceased natives; sorcery.

In 1894, Roads; planting cocoanuts.

In 1895, Extortion; water channels; roads; protection of valuable plants.

(iv.) The Native Children Custody and Reformation Ordinances of 1891 and 1892.

(v.) The Native Labour Ordinances of 1892 and 1893 regulate the employment, as hired labourers, of aboriginal natives of the Possession.

(vi.) The Transactions with Natives Ordinance of 1893 regulates certain contracts when a "native" is one of the contracting parties.

II.—Statute Law.

(*a*) It consists of the Letters Patent passed under the Great Seal (June 8, 1888) for erecting certain British territory in New Guinea and the adjacent islands into a separate possession, and providing for the government thereof.

The instructions (June 8, 1888) passed under the Queen's sign-manual to the Administrator of British New Guinea.

The Order of the Queen in Council (May 17, 1888) to confer upon the Supreme Court of the colony of Queensland appellate jurisdiction in respect of certain matters arising or occurring in British New Guinea.

The Order of the Queen in Council (November 24, 1891) to confer upon the Supreme Court of the colony of Queensland appellate jurisdiction in Admiralty matters.

Acts and regulations, some of which adopt the law of Queensland.

(*b*) Certain statutes were adopted by "The Courts and Laws Adopting Ordinance (Amended) of 1889," being Ordinance No. VI. of 1889. See s. iii. of the said ordinance.

(*c*) A portion of the statute law of Queensland is in force, but only by express adoption.

(*d*) There is no code or other body of enacted law of non-British origin.

III.—Methods of Legislation.

(*a*) Drafts are prepared sometimes by the Lieutenant-Governor, sometimes by the Chief Judicial Officer. Drafts are approved by the Governor of Queensland before they are submitted as bills to the Legislative Council.

(*b*) The constitution of the Legislative Chamber is defined by Articles IX. and X. of the Royal Letters Patent of June 8, 1888, and Articles XIII. to XVI. of the Royal Instructions of June 8, 1888. There is only one chamber.

(*c*) Draft measures are not published before introduction.

(*d*) Measures passed by the Legislative Council are assented to by the Administrator. Certain measures, however, require her Majesty's assent. See Article XXIII. of the Royal Instructions of June 8, 1888.

(*e*) No necessity for a reference of measures to a special officer or committee has so far arisen.

(*f*) Uniformity of language is provided for by Article XXII. of the Royal Instructions of June 8, 1888; and the Acts Shortening Act of 1867, 31 Vict. No. 6 of Queensland adopted by the Possession; and the Interpretation Ordinance of 1891, being Ordinance No. I. of 1891.

(*g*) There is no annual session. There are no fixed or customary periods of session.

(*h*) Acts are numbered by reference to the calendar year. It is the practice to confer a short title. This practice has been followed from the foundation of the colony.

(*i*) So far no private bills have ever been introduced.

(*j*) No explanatory memorandum is used.

IV.—Publication of Statutes.

(*a*) Statutes are printed in the *Government Gazette* by the authority of the Administrator. The production of the *Gazette* containing the statute, or the production of an original duplicate of the statute, signed by the Administrator and sealed with the seal of the Possession, is evidence of the law.

(*b*) Acts are printed as supplements to the *Gazette* by the authority of the Administrator.

(*c*), (*d*) Acts are not printed in a collective form at the end of each session. The Government printing staff and appliances are very limited.

(*e*) The statutes have not been published in any collective form.

(*f*) There is no edition of selected statutes.

(*g*) There are no private Acts.

V.—Revision of Statutes.

(*a*), (*b*) The ordinances are not sufficiently numerous to render any revision necessary.

VI.—Indexing of Statute Law.

The Queensland index is used for the Acts of that colony which have been adopted.

VII.—Consolidation and Codification.

None.

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VIII.—Subordinate Legislation.

These are generally drafted by the Chief Judicial Officer. They are approved by his Excellency the Governor of Queensland. They are passed by the Administrator in Council. They are published in the *Gazette*.

THE GAMBIA.[1]

I.—Common Law.

(*a*) The common law of England is the common law of the colony of the Gambia.

As early as 1618 there was a settlement of English merchants on the Gambia.

In 1664 there was a company of English merchants trading at a fort which they had established about twenty miles up the river, and which was known as Fort James. According to recognized principles of law, the common law of England must have been the law to which these settlers were subject.

The present colony of the Gambia, however, traces its unbroken descent from some British merchants, who, in 1816, emigrated from Senegal and settled on the island of Banjolo, now called St. Mary's, not far from the estuary of the river Gambia, and eventually the island and adjoining territories were ceded to Great Britain by Toomany, King of Combo.

Bathurst, the present capital of the colony, is the lineal descendant of this settlement of British merchants.

The settlement was extended by the purchase of Macarthy's Island in 1823, by the cession of the Ceded Mile by the King of Barra in 1826, by the cession of Cape St. Mary and the rest of British Combo by the King of Combo in 1827, 1840, and 1853.

The common law of England was, under the circumstances, the law introduced by the settlers in 1816, into their new settlement on the Gambia.

In 1821, by 1 & 2 Geo. 4, c. 27, the African Company was abolished, and their possessions, including the settlement on the Gambia, vested in the Crown. In consequence of s. 3 of the same statute, the Gambia in 1821 became a dependency of Sierra Leone, and subject to all such laws, statutes, and ordinances as were in force in that colony, as if it had originally formed part of the said colony of Sierra Leone.

As the common law of England was also the common law of Sierra

[1] Prepared by J. Renner Maxwell, Esq., chief magistrate.

Leone by virtue of its having been acquired by settlement, the common law of England continued to operate as the common law of the settlement on the Gambia.

In 1843 the Gambia was constituted a separate settlement with its own legislature; but that, of course, did not affect the operation of the common law of England in the newly constituted colony.

In 1866 the Gambia again became merged in the West African Settlements, subject to the Governor-in-Chief at Sierra Leone, but retaining its own independent legislature.

This change in the constitution did not affect the *status quo ante*, so far as the operation of the English common law in the colony was concerned.

In 1888 the settlement of the Gambia was constituted into an independent colony, under the style of the Colony of the Gambia; but neither did this last stage in the constitutional growth and vicissitudes of the colony affect the operation of the English common law within the territorial limits of the colony.

By the Gambia Protectorate Ordinance, 1894, ss. 26 & 27, the commissioners of districts in the Protectorate are invested with magisterial jurisdiction over British subjects and the subjects of civilized powers; and s. 28 provides that in the exercise of the commissioner's jurisdiction, the laws of the colony shall be applicable as far as circumstances permit. Thus the English common law, as part of the laws of the colony, has extra-territorial operation in the Protectorate.

By s. 10 of the same ordinance, the native tribunals constituted under the ordinance have the power to administer native laws and customs which are not repugnant to natural justice nor incompatible with any ordinance of the colony which applies to the protected territories.

How far native customs will be recognized as not being repugnant with natural justice is a question for future solution, and will be gradually decided as the customs come before the courts for adjudication.

There are some customs practised by certain castes and tribes to which they attach great importance, but which can hardly be expected to continue under British directed administration.

The Griots, a minstrel and despised caste, in the territories from which they originate, do not dispose of their dead by cremation or by earth-burial, but by depositing the corpses in an upright position in cavities made in the trunks of baobab trees.

Again, the funeral customs of the Jolahs can hardly be considered consistent with civilized ideas of sanitary requirements or of decency.

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The corpse of the deceased, arrayed in the most gorgeous raiments which he possessed when alive, is exposed to the public view in some conspicuous place; all the household goods, cattle, and other property of the deceased are placed before his corpse; a pipe is thrust into the mouth; a banquet of the choicest rice, beef, and poultry, with calabashes filled with foaming palm wine, are laid before it, some of the contents being forced into the dead mouth; of this banquet children and friends of the deceased partake; deceased is loudly rated for being such a fool as to die when he possessed such sources of enjoyment and gratification of his appetites. After these ceremonies have lasted for as long as the state of the corpse will permit—that is, until decomposition has actually set in—the corpse is, amidst the most doleful dirges of the women, accompanied by appropriate gestures of the body, buried in a sitting posture near his hut, and with his face turned towards it.

These and kindred customs can hardly be expected ever to acquire the force of law under British directed administration.

I have no doubt, however, that the commissioners, who are assessors to the native tribunals in the Protectorate, will advise those tribunals that their customs and laws with regard to the contracting of marriages, of succession, and of inheritance, are not repugnant to natural justice.

(*b*) There is no *common* law applying exclusively to particular races or creeds in the colony. In the protected territories, where the bulk of the population is Mohammedan, the native customs are, as a rule, based on the precepts of the Koran, and may therefore be said to apply exclusively to Mohammedans.

Some sections of the Gambia Protectorate Ordinance, 1894, apply exclusively to natives of the Protectorate, the word "native" including all persons resident in the protected territories other than subjects of a civilized power.

Other portions of the same ordinance apply exclusively to British subjects and the subjects of civilized powers.

The Mohammedans' Exemption Ordinance, 1889, applies exclusively to Mohammedans, and exempts them from ss. 4 and 8 of the Criminal Law Amendment Act, 1885, if validly married, according to the laws, rites, and customs of the Mohammedan religion, to the girl or woman in relation to whom the offence is alleged to have been committed.

S. 4 of the Protectorate (Public Lands) Ordinance, 1896, applies exclusively to Europeans.

II.—Statute Law.

(*a*) The statutory or enacted law of the colony consists of—

1. Imperial Acts which, by express provision or necessary intendment,

are applicable to all her Majesty's dominions, *e.g.* the Bankruptcy Act,[1] the Merchant Shipping Act, 1894.

2. Imperial Acts which are applicable to all the colonies, *e.g.* the Colonial Laws Validity Act, 28 & 29 Vict. c. 63.

3. Imperial Acts specifically applicable to the colony, *e.g.* 34 Vict. c. 8.

4. Orders of her Majesty in Council.

5. Ordinances passed by the local legislature.

6. Orders of the Administrator in Council framed by virtue of authority conferred by some local ordinance.

7. Rules framed by the Administrator in Council or by other officers by virtue of powers conferred by some ordinance.

Rules framed otherwise than by the Administrator in Council are generally subject to the approval of the legislature.

The constitution of the colony, the powers of the Administrator, the constitution of the Executive and Legislative Assemblies, are fixed by the Letters Patent passed under the Great Seal of the United Kingdom (November 28, 1888), accompanied by instructions passed under the royal sign manual and signet to the Governor.

Whether correctly or not, these Letters Patent are described in the colony as the Charter of Government.

By s. 6 of the Colonial Gunpowder Magazine Ordinance, 1892, the Administrator in Council is empowered to frame rules generally for protecting persons and property from danger from gunpowder.

By s. 16 of the Firearms, Ammunition, and Gunpowder Ordinance, 1892, the Administrator in Council is empowered to frame such rules as he may consider expedient for the regulation of the landing, storage, withdrawal, or conveyance of any firearms, ammunition, or gunpowder imported into the colony.

By s. 6 of the Sunday Cargo-Working Ordinance, 1892, the Administrator in Council may make regulations as to the fees to be taken for permits to work on Sundays, the hours on which applications for such permits may be made, and the conditions on which they may be granted.

By s. 27 of the Druggists Ordinance, 1894, the Administrator may, with the advice of the Legislative Council, make rules for carrying out the ordinance.

(*b*) (i.) (ii.) No statutes of the United Kingdom operate in the colony by virtue of either extension of English law or provisions of any Order in Council or Charter.

(iii.) By an Ordinance of November 27, 1843, all Imperial Acts passed

[1] See *Calendar, Sykes & Co.* v. *Davies*, 1891, A.C. 460.

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since October 17, 1821, and which alter or amend the criminal law of England, were made operative in the colony—*i.e.* 2 Geo. 4 to 7 Vict.

A large number of Imperial Acts have been adopted by Ordinances of February 27, 1872, and September 15, 1879.

(*c*) By an Ordinance of July 10, 1851, the Colonial Legislature adopted ten of the Sierra Leone Ordinances which were in force when this colony was a dependency of Sierra Leone; of these, five only are at present wholly or partially unrepealed.

(*d*) There is no code or other body of enacted law of non-British origin in force in the colony.

III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the only judicial and law officer in the colony—the chief magistrate. There is no official draftsman, unless the chief magistrate be considered one. The chief magistrate is appointed by her Majesty. As draftsman the chief magistrate has no staff. Private or unofficial measures, which are very rare, are not prepared by the chief magistrate. There have been only two such measures within the past decade. Rule 53 of the Rules of the Legislative Council provides that they must be prepared and printed at the expense of the parties interested.

(*b*) The Legislative Council of the colony consists of the Administrator, the treasurer, the chief magistrate, the collector of customs, and such other official and unofficial members as her Majesty may appoint. At present there are two unofficial, but no other official, members (Instructions to Governor dated November 28, 1888, s. 13).

(*c*) Draft measures are freely circulated amongst the members of the legislature before introduction. Rule 39 of the Rules of the Legislative Council provides that a printed copy of each bill shall, in so far as may be possible, be sent to each member twenty-four hours at least before it is proposed to read it a first time.

Rule 41 provides that, after having been read a first time, every bill shall, if such is possible, be published in the *Government Gazette.*

Rule 42 provides that there shall be an interval of a week between the first and second reading, and the second and third reading respectively.

(*d*) The stages of measures are as follows: Introduction, first reading, second reading, committee, third reading, Administrator's assent.

(*e*) Under Rule 44 such reference can take place, but it is rarely, if ever, resorted to in practice.

(*f*) The Interpretation Ordinance, 1887, which is based on Lord

Brougham's Act (13 & 14 Vict. c. 21), secures uniformity of language in ordinances.

S. 22 of Instructions to Governor, dated November 28, 1888, provides for the style and arrangement of ordinances.

(*g*) There is no annual or fixed session of the legislature. The Legislative Council is convened by the Administrator whenever there is any business to transact.

(*h*) Ordinances passed in any one year are numbered consecutively, and are distinguished by their number and the calendar year. It is the practice to confer a short title.

(*i*) Private bills are not treated separately. They are very rare.

(*j*) Usually no memorandum accompanies a measure, but in the cases of extraordinary importance, as on the introduction of the Gambia Protectorate Ordinance, 1894, the Administrator prepares and reads such a memorandum.

IV.—Publication of Statutes.

(*a*) The assent of the Administrator to ordinances is announced in the *Government Gazette.*

The Registration Ordinance (s. 13) provides that "every ordinance that shall hereafter be passed by the Administrator and Council shall, within ten days from the passing thereof, be transmitted by the clerk of the Council to the registrar, who shall keep such ordinances in a book for public inspection, and the registrar shall be entitled to demand and receive the same fees for manuscript copies thereof and for search as are herein provided for in respect of other instruments registered under this ordinance."

The Supreme Court Ordinance, 1888 (s. 75), provides that all legislative acts of State appearing in any *Government Gazette* be proved by the production of the *Government Gazette*, and shall be *primâ facie* proof of the fact which they were intended to notify.

The Interpretation Ordinance, 1887 (s. 6), enacts that all ordinances shall be judicially taken notice of, and a copy of every ordinance purporting to have been printed by the authority of the Administrator shall be admitted in evidence in all cases whatsoever, and it shall not be necessary in any case to prove that such copy was printed by such authority.

(*b*) Ordinances are printed by the Government printer, under the authority of the Administrator, on sheets of foolscap paper, bound together when necessary.

(*c*) A number of copies of ordinances passed during the year, sufficient for governmental purposes, are bound at the end of the year.

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(*d*) Vols. 1, 2, 3 of Gambia ordinances have an index and tables.

(*e*) Vol. 1 of Gambia Ordinances was compiled by the late Mr. Algernon Montague, Registrar-General of Sierra Leone, and was published by the Government. Out of 248 ordinances in that volume contained, only 32 remained wholly or partially unrepealed.

Vols. 2 and 3 of Gambia Ordinances were compiled by Mr. Francis Smith, then chief magistrate of this colony, now a puisne judge of the Gold Coast colony. Subsequent ordinances have, to save expense, been roughly bound together at the end of each year.

These volumes contain some of the Imperial Acts in force in the colony.

(*f*) There is at present no edition of "Selected Statutes" corresponding to Chitty's "Statutes of Public Utility," but one is in course of preparation.

(*g*) Private ordinances are published in the same manner as public.

V.—Revision of Statutes.

(*a*) No steps have been taken for the revision of the statute law, and no machinery exists for this purpose.

(*b*) There will shortly be such an edition of statutes periodically published.

The contents will be alphabetically arranged. None exists at present.

VI.—Indexing of Statute Law.

There is no such index.

VII.—Consolidation and Codification.

(*a*) The Supreme Court Ordinance and the Rules of Court were drafted by the present writer, and might be said to form a code of civil procedure.

The Rules of Court had to be adopted by the Chief Justice of Sierra Leone, who, when this colony was a dependency of Sierra Leone, had power to make rules for the Court of Civil and Criminal Justice, as the Supreme Court of this colony was then styled.

The Police Force Ordinance, 1886, codifies the law relating to police constables.

The Public Health and Police Ordinance, 1887, is a code of sanitary and police law.

(*b*) No special machinery exists for the purpose of codification.

(*c*) In addition to the codes mentioned in (*a*), all the Imperial Consolidation Acts of 1861 are in force in this colony; so also is the Bills of Exchange Act, 1882.

VIII.—Subordinate Legislation.

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In most cases measures of subordinate legislation are drafted by the chief magistrate; but they are sometimes prepared by the Administrator himself, or by the head of the department concerned, and have been in some instances prepared by the Administrator and a committee of merchants, as in the case of the Tariff of Wharf Fees, 1895; and by the Board of Education, as in the case of the Educational Rules, 1896. There is at present no collection of, or index to, such subordinate measures.

THE EGYPTIAN GOVERNMENT AND THE CAISSE DE LA DETTE.[1]

[*By Malcolm McIlwraith, Esq., of Lincoln's Inn.*]

THE facts of this matter are still, doubtless, within the memory of every one.

When, early in 1896, the British Government determined to undertake an expedition to Dongola for the recapture of a portion of the Soudan, it was determined to ask the Caisse de la Dette to advance a sum of £500,000 towards the expenses of the campaign. The commissioners met at Cairo, on March 26, 1896, and voted, by a majority of four to two, the grant of this sum to the Egyptian Government out of the reserve funds in their hands applicable, amongst other purposes, to "extraordinary expenses." The dissenting commissioners were the French and Russian members of the Caisse, Messrs. Louis and Yonine, who withdrew from the sitting, after having entered a formal protest against the grant. Shortly afterwards a syndicate of the bondholders of the unified debt, under the presidency of Mr. Herbault, commenced, before the Mixed Tribunal of Cairo, an action against the

[1] Cf. "La Caisse de la Dette Égyptienne, ses pouvoirs et sa responsabilité." Nicolas Politis. *Revue générale de droit international public*, No. 2, 1896.

"Égypte, Affaire de la Caisse de la Dette publique." *Revue générale de droit international public*, No. 4, 1896.

"Le procès de la Caisse de la Dette Égyptienne devant la Cour mixte d'Alexandrie. Les jugements et les actes d'appel." H. Babled. *Revue générale de droit international public*, No. 5, 1896.

"La France et la Commission de la Dette publique Égyptienne." Chronique fiscale et financière. H. Saint Marc. *Revue de droit public et de la science politique*, No. 3, 1896.

Kaufmann, "Die Kommissäre der Kasse der Egyptischen Staatsschuld und das internationale Recht." Berlin, 1896.

Parl. Pal. Egypt, No. 1 (1897). Correspondence respecting the lawsuit brought against the Egyptian Government in regard to the appropriation of money from the general reserve fund to the expenses of the Dongola Expedition.

"Le procès de la Caisse de la Dette Égyptienne et l'arrêt de la Cour d'Alexandrie." H. Babled. *Revue générale de droit international public*, No. 1, 1897.

Egyptian Government and the four commissioners of the Caisse who voted for the grant, for a declaration that the Caisse was incompetent to employ the funds of the general reserve fund for a military purpose, and for an order that the commissioners should reimburse to the fund the sums illegally paid out to the Egyptian Government. The French and Russian commissioners also commenced an action against the same parties for a declaration that they were personally not liable for the action of the Caisse in this matter; that the decision of March 26 was illegal; and that the Government was bound to repay all the sums expended on the strength of this decision. Finally, Mr. Bouteron, the French commissioner of domains, considering that the decision of March 26 was prejudicial to the guarantees of the domains loan, addressed a personal letter of protestation to the commissioners of the debt,[1] and formally intervened in the case. The proceedings should have come on before the Mixed Tribunal of First Instance at Cairo, on April 13; but on that date another syndicate of bondholders of the unified debt obtained leave to intervene, in order to support the action of the Egyptian Government and the majority of the Caisse. The matter was adjourned till April 27, when the defendants pleaded that there was no jurisdiction. The Court adjourned the discussion both as to jurisdiction and the merits till April 29, when the Government and the commissioners of the majority of the Caisse failed to appear. Counsel for the syndicate was heard, and the matter was again adjourned to May 11, and subsequently to May 13, for the conclusions of the "ministère public." Finally, judgment was delivered on June 8 in favour of the plaintiffs.[2]

[1] See *Journal des Débats*, April 12, 1896.

[2] En la Cause civile: Herbault, Nemours et consorts, demandeurs; contre—
1. Gouvernement Égyptien,
2. MM. Louis, Money, Morana, Baron de Richthofen, Comte Zaluski, Yonine, Mog Bey et Magdi Bey, ès-noms, ès-qualités, défendeurs;
3. MM. C. G. Zervudachi et Fils et consorts,
4. M. Édouard Bouteron,
5. MM. Gibson et Chakib Pacha, intervenants.

Le Tribunal Mixte,

Après en avoir délibéré conformément à la loi;

Attendu que MM. Herbault et consorts, porteurs de titres de la Dette Unifiée, prétendant que c'est en violation des garanties à eux données, et contrairement à la lettre et à l'esprit du Décret du 12 Juillet, 1888, que la Caisse a autorisé le prélèvement par le Gouvernement sur le fonds de réserve général, de diverses sommes spécialement affectées par divers Décrets aux porteurs de titres, pour les employer à l'expédition militaire de Dongola, ont assigné:—

1. Le Gouvernement Égyptien à l'effet de s'entendre condamner à restituer au dit fonds de réserve les sommes qui auraient été indûment prélevées par lui; et

2. MM. Money, Morana, Baron de Richthofen, et Comte Zaluski, à l'effet de se

From this judgment the defendants appealed immediately, on June 11, without even waiting for formal notice of the decree; and the Court of

voir condamner solidairement avec le Gouvernement, à défaut de restitution des sommes dont s'agit par ce dernier;

Attendu que MM. Louis et Yonine, en leur qualité de Commissaires de la Caisse de la Dette, ont assigné le Gouvernement Égyptien, en basant leur demande sur les mêmes motifs que MM. Herbault et consorts ont déclaré agir conformément aux dispositions de l'Article 38 de la Loi de Liquidation, et demandé que le Gouvernement Egyptien soit condamné à restituer les sommes indûment prélevées par lui, dont il vient d'être parlé;

Attendu qu'il y a lieu de joindre les deux instances, vu leur connexité;

Attendu qu'à l'audience les Commissaires des Domaines, répondant à la sommation à eux signifiée, à la requête de MM. Herbault et consorts, ont déclaré intervenir dans le débat;

Que sont intervenus également les syndicats Zervudachi et consorts, Stagni et consorts;

Attendu que M. Bouteron, en sa qualité de Commissaire des Domaines, prétendant que, par suite du dit prélèvement par le Gouvernement, les droits des porteurs de titres de la Dette Domaniale, résultant des Décrets du 12 Juillet, 1888, et 6 Juin, 1890, ont été violés, a conclu aux mêmes fins que le syndicat Herbault et consorts;

Attendu qu'à ces demandes, fins, et conclusions le Gouvernement Égyptien et MM. Money, Morana, Baron de Richthofen, et Comte Zaluski ont opposé une exception d'incompétence à laquelle se sont ralliées MM. Chekib Pacha et Gibson, Commissaires des Domaines et les syndicats intervenants;

Attendu que les dits syndicats intervenants ont soulevé des fins de non-recevoir, tant contre les demandes dont s'agit que contre l'intervention de M. Bouteron;

Attendu enfin que le Gouvernement et les Commissaires Money, Morana, Baron de Richthofen, et Comte Zaluski ayant conclu à ce qu'il ne soit statué que sur la question de compétence le Tribunal a ordonné de joindre l'incident au fond;

I. *Compétence:*

Attendu que le Gouvernement Égyptien formule ainsi son exception dans ses conclusions:—

"Attendu, en effet, que la décision prise par le Gouvernement d'accord avec la Caisse de la Dette, d'affecter à un usage déterminé une partie du fonds de réserve, constitue un acte de Gouvernement ou, en d'autres termes, de souveraineté, qui échappe, par sa nature même, à l'appréciation ou à l'examen de l'autorité judiciaire."

Que, de leur côté, MM. Money, Morana, Baron de Richthofen, et Comte Zaluski disent:—

"Que le Tribunal ne pourrait connaître des dispositions prises par le Gouvernement Égyptien, d'accord avec la Commission de la Caisse de la Dette Publique, sans commettre un véritable excès de pouvoirs, car le Gouvernement, en demandant le prélèvement de £ E. 500,000 sur le fonds général de réserve, et la Commission de la Caisse de la Dette Publique, à la majorité des votes, en accordant ce prélèvement pour l'expédition de Dongola, ont agi les deux comme pouvoir souverain préposé à la gestion des intérêts généraux de l'État, et, comme tels, ne sauraient raisonnablement être assignés par-devant le Tribunal, contrairement aux dispositions de l'Article 11 du Règlement d'Organisation Judiciaire, d'après lesquels les Tribunaux Mixtes ne peuvent interpréter, ni arrêter l'exécution d'une mesure administrative. Qu'ainsi donc le prélèvement sur le fonds de réserve avec l'assentiment de la Commission de la Dette constitue, comme dans les États constitutionnels, pour tout emploi des deniers de l'État affectés avec vote du Parlement, un acte de l'exercice de la souveraineté,

Appeal of Alexandria confirmed the judgment, upon the main question at issue, by a decision of December 2, 1896. (See judgment on p. 398.)

échappant à la compétence des Tribunaux, beaucoup plus encore que de simples mesures administratives."

Attendu que le Gouvernement Égyptien ne cherche même pas à démontrer qu'en demandant aux Commissaires de la Dette le prélèvement dont s'agit, il y ait eu de sa part *acte de souveraineté*, mais il prétend que, dès que l'autorisation de prélever a été donnée par la Commission de la Caisse de la Dette, l'acte de souveraineté est parfait ;

Attendu que, ni le Gouvernement Égyptien, ni les Commissaires susnommés n'établissent à l'aide de documents légaux qu'en effet la Commission de la Caisse de la Dette Publique ait un rôle à peu près semblable à celui d'un Parlement dans un Gouvernement constitutionnel, qu'en un mot, MM. les Commissaires aient reçu un mandat politique, qui leur accorde certaines immunités, et notamment ne les rend pas justiciables des Tribunaux Mixtes ;

Attendu que, dans ces circonstances, il est nécessaire de rechercher quel est le véritable caractère du mandat donné aux Commissaires de la Dette vis-à-vis des porteurs de titres ;

Attendu que les rapports entre le Gouvernement Égyptien, emprunteur, et les porteurs de titres, prêteurs, sont régis par une série de Décrets, dont le premier est en date du 2 Mai, 1876, Décrets qui ont été rendus en partie en vertu du droit souverain du Khédive, et en partie avec l'assentiment des Puissances ;

Attendu que le Décret du 2 Mai, 1876, instituant la Caisse de la Dette Publique porte dans son préambule :—

"Avons résolu d'instituer une caisse spéciale chargée du service régulier de la Dette Publique, et de nommer à sa direction des Commissaires étrangers, lesquels seront, sur notre demande, indiqués par les Gouvernements respectifs, comme fonctionnaires aptes à remplir le poste auquel ils seront nommés par nous en qualité *de fonctionnaires Egyptiens*."

Qu'à l'Article 4 il est dit :—

"Les actions qu'au nom et dans l'intérêt des créanciers, en grande partie étrangers, la Caisse et pour elle ses Directeurs, croiront avoir à exercer contre l'Administration Financière, seront portées devant les Tribunaux Mixtes."

Que la simple lecture du dit Article 4 indique clairement que les Commissaires sont les mandataires légaux des porteurs de titres, et que compétence est donnée aux Tribunaux Mixtes dans toutes les contestations pouvant naître entre les Directeurs de la Caisse et l'Administration Financière ;

Attendu qu'à l'Article 39, la Loi de Liquidation du 17 Juillet, 1880, a maintenu avec force exécutoire toutes les dispositions des Décrets antérieurs concernant les attributions de la Commission de la Dette Publique qui ne sont pas contraires à la dite Loi ;

Attendu que complétant les dispositions de l'Article 4 de Décret du 2 Mai, 1876, elle dit à l'Article 38 :—

"Les Commissaires de la Dette, représentants légaux des porteurs de titres, auront qualité pour poursuivre devant les Tribunaux de la Réforme contre l'Administration Financière, représentée par notre Ministre des Finances, l'exécution des dispositions concernant les affectations de revenus, le taux de l'intérêt des dettes, la garantie du Trésor, et généralement toutes les obligations qui incombent à notre Gouvernement en vertu de la présente Loi, à l'égard du service des Dettes Privilégiée et Unifiée."

Qu'il ne saurait donc être douteux que c'est la loi qui a donné aux Commissaires de la dette la qualité de *mandataires légaux des porteurs de titres*, et édicté que toutes

It is proposed in the following pages to consider as briefly as possible the merits of this controversy. And, first of all, let us say

contestations pouvant exister entre le Gouvernement et les porteurs de titres représentés par les Commissaires doivent être portées devant les Tribunaux Mixtes ;

Attendu qu'on a objecté que cette attribution de juridiction n'a trait qu'aux contestations entre la Commission de la Dette et le Gouvernement Égyptien, et ne saurait s'étendre au delà ;

Mais attendu que le dit Article 38, qui a réglementé le droit d'action des Commissaires de la Caisse vis-à-vis du Gouvernement n'a pas pu avoir pour effet de priver les porteurs de titres du droit d'action que leur confère la loi ;

Attendu qu'il n'y a pas lieu de s'attarder à démontrer, ce qui est l'évidence même, que, mandataires légaux, les Commissaires de la Caisse sont, comme tous les mandataires légaux (syndics de faillite, séquestres), soumis aux règles du droit commun, et regis dans leurs rapports, soit avec l'État, soit avec les porteurs de titres, par tous les Décrets rendus en la matière depuis 1876, ainsi que par les Codes Mixtes, Décrets, et Lois qui forment le droit public interne de l'Égypte, et que les Tribunaux Mixtes ont le pouvoir d'interpreter et la mission de faire observer.

Attendu que si, depuis son institution, la Commission de la Caisse de la Dette a été investie à diverses reprises par les Puissances, de délégations politiques ou législatives, ces délégations n'ont été données qu'à titre temporaire ;

Qu'il suffit de rappeler à cet égard les réserves faites par le Ministre de France à l'occasion du Projet de Loi sur le timbre et les patentes, et spécifiant que cette délégation n'avait "qu'un caractère exceptionnel et ne constituait à aucun degré une extension de compétence pour l'avenir ;"

Qu'il découle donc de tout ce qui précède, que ce n'est que par exception que les Commissaires ont eu un mandat politique portant sur des objets déterminés. Mais qu'en tant que "représentants légaux de porteurs de titres, ils n'ont qu'un mandat civil, régi par les règles du droit commun ;"

Qu'ils ne peuvent donc repousser la demande dont s'agit, en invoquant un pouvoir souverain dont jusqu'à ce jour ils n'ont pas été investis par les Puissances ;

Attendu que si, aux termes du Décret du 6 Juin, 1890, les Commissaires de la Dette sont les mandataires des Puissances qui ont garanti l'Emprunt de 1885, ils n'en sont pas moins des mandataires légaux des porteurs de titres du dit Emprunt Garanti, et que, par suite leur situation légale vis-à-vis de ces derniers est la même que vis-à-vis des porteurs de titres des autres dettes ;

Attendu que l'exception du Gouvernement et des dits Commissaires manque de fondement de ce premier chef ;

Attendu qu'en admettant que l'acte dont s'agit puisse être qualifiée d'acte de souveraineté, l'exception d'incompétence ne saurait être recevable, qu'en effet ce n'est pas la première fois que le Gouvernement soulève la dite exception et qu'il est inutile de rappeler ici les divers arrêts qui décident que "les Traités Internationaux régissant les emprunts publics constituent une limitation à l'exercice du droit éminent de l'État emprunteur, et confèrent aux porteurs de titres une *base légale des droits acquis ;* que les Tribunaux Mixtes sont, dès lors, compétents, aux termes de l'Article 11 du Règlement d'Organisation Judiciaire, pour statuer sur les atteintes que tout acte gouvernemental, toute mesure administrative contraire à ces Traités, peuvent faire subir aux droits d'étrangers porteurs de titres ;"

Attendu que la demande dont est saisi le Tribunal ne conteste en rien le pouvoir souverain du Gouvernement Égyptien de faire l'expédition de Dongola comme toute autre expédition militaire, qu'elle se base sur la violation des droits conférés aux porteurs de titres, sur l'inexécution des engagements pris vis-à-vis d'eux par le Gouvernement ou encore sur une atteinte portée à un droit acquis ; qu'il ne saurait

a word as to the jurisdiction to which the controversy in question was referred.

donc être douteux que les Tribunaux Mixtes ont toute compétence pour en connaître ;

II. *Fins de non-recevoir :*

Attendu que les fins de non-recevoir soulevées par les parties peuvent se résumer ainsi :—

1. Défaut de qualité des porteurs de titres pour ester en justice soit contre le Gouvernement, soit contre les Commissaires.

2. Nullité de l'assignation de MM. Louis et Yonine.

3. Défaut de qualité de MM. Louis et Yonine, ainsi que de M. Bouteron, en tant que faisant partie de la minorité dans leurs Commissions ;

Sur le défaut de qualité des porteurs de titres :

Attendu que l'on avance que l'Article 4 du Décret de 1876 et l'Article 38 de la Loi de Liquidation ont conféré aux Commissaires de la Dette le droit d'ester en justice dans l'intérêt des créanciers, et l'on ajoute "que cet acte a toujours été interprété en ce sens que les créanciers du Gouvernement Égyptien étaient dépouillés du droit d'agir individuellement et qu'ils étaient liés par le mandat général exclusif et irrévocable consenti en leur nom par leurs pouvoirs souverains respectifs ;"

Attendu qu'il vient d'être démontré à propos de la compétence, que les Commissaires dans leurs rapports avec les porteurs de titres, n'ont qu'un mandat ordinaire régi par les règles du droit commun ;

Que l'on n'a produit aucune décision de la Cour d'Appel Mixte faisant connaître que les Articles 4 et 38 doivent être interprétés dans le sens indiqué ci-dessus ; qu'au contraire la teneur des Articles cités, et l'étude de l'ensemble des divers Décrets ayant trait aux emprunts de l'État conduisent à une interprétation toute différente ;

Attendu que si la thèse soutenue par les demandeurs en exception était admise, on arriverait à proclamer l'irresponsabilité complète des Commissaires de la Caisse, de telle sorte qu'ils n'auraient plus une *souveraineté limitée*, comme ils l'ont prétendu, mais un *pouvoir absolu ;*

Qu'en effet ils pourraient répondre à l'autorité qui les a nommés mandataires légaux, qu'ils n'ont pas à lui rendre compte de leur mandat, mais bien aux porteurs de titres, leurs mandants, et à ceux-ci qu'ils ont été *dépouillés* de toute action contre eux, et il en résulterait qu'ils n'auraient aucun compte à rendre à personne, ce qui est inadmissible ;

Attendu que, mandataires légaux des porteurs de titres, ils doivent répondre à toute action intentée contre eux dérivant du droit commun ;

Qu'il est au surplus inutile d'insister sur ce point ; qu'il suffit de rappeler ici les Articles 9, 10, et 11 du Règlement d'Organisation Judiciare, qui déterminent la compétence dans les cas où une personne croit avoir à demander en justice réparation d'une atteinte à ses droits, sans qu'il soit nécessaire de citer les nombreux arrêts déjà rendus par la Cour d'Appel Mixte en cette matière, pour qu'il ne subsiste aucun doute sur la légitimité de l'exercice de ce droit d'action individuelle ;

Attendu que notamment l'Article 11 du Règlement d'Organisation Judiciaire précité édicte d'une manière formelle que les Tribunaux Mixtes pourront juger *dans les cas prévus par le Code Civil* des atteintes, etc. ;

Qu'il n'est que trop évident que si à l'Article 4 du Décret de 1876 et à l'Article 38 de la Loi de Liquidation, le législateur avait entendu faire une dérogation aux prescriptions contenues dans le Règlement d'Organisation Judiciaire et *dépouiller* les parties du droit à elles conféré par la loi, il l'aurait déclaré d'une manière précise, ce qui n'a pas eu lieu ;

Attendu qu'en conséquence la dite fin de non-recevoir ne saurait être accueillie ;

The Mixed Courts were established in 1876, and were the fruit of the indefatigable efforts of Nubar Pasha to rid the country of the

Sur la nullité de l'assignation de MM. Louis et Yonine :

Attendu qu'il est superflu de rechercher si la nullité existe du moment que MM. Louis et Yonine, déjà mis en cause par MM. Herbault et consorts, pouvaient valablement prendre des conclusions à l'audience ; qu'il est constant que les conclusions du dit exploit ont été renouvelées par MM. Louis et Yonine à l'audience ; qu'il s'ensuit qu'il est sans intérêt de statuer sur la validité du dit exploit d'assignation ;

Sur le défaut de qualité de MM. Louis, Yonine, et Bouteron :

En ce qui concerne MM. Louis et Yonine :

Attendu que l'on a allégué que la Commission de la Caisse seule avait qualité pour ester en justice, soit sur l'avis unanime de tous les Commissaires, soit à la majorité de ses membres, mais que jamais ce droit ne pourrait appartenir à la minorité de la Commission ;

Attendu que le mandat donné aux Commissaires étant régi par le droit commun, il en résulte pour chacun d'eux un droit d'action toutes les fois que les intérêts des porteurs de titres qui lui sont confiés sont compromis par les autres Commissaires et que sa responsabilité personnelle peut être engagée ;

En ce qui concerne M. Bouteron :

Attendu que l'intérêt des porteurs de titres de la Dette Domaniale ne peut être discuté en présence du passage de l'Article 3 du Décret du 12 Juillet, 1888, qui prévoit parmi les dépenses l'insuffisance annuelle de revenus de l'Administration des Domaines, et de l'Article 9 du Décret de 6 Juin, 1890, qui porte *in fine* :—

"Le surplus sera employé pour les neuf dixièmes à l'amortissement de la Dette Unifiée et pour un dixième à l'amortissement de la Dette Domaniale ;"

Attendu que le droit de tout porteur de titres de la Dette Domaniale d'ester en justice pour atteinte à un droit acquis, résulte tant des Conventions des 31 Octobre, 1878, et 1er Février, 1879, que de l'Arrêt de la Cour d'Alexandrie en date du 1er Novembre, 1878 ;

Que l'on ne saurait donc refuser ce même droit aux Commissaires des Domaines, représentant la collectivité des porteurs de titres de l'Emprunt Domanial ;

Qu'il est également certain, ainsi qu'il vient d'être démontré pour les Commissaires de la Caisse de la Dette, que chaque Commissaire des Domaines a un droit individuel d'action, toutes les fois que sa responsabilité personnelle peut être engagée ;

Attendu qu'après discussion sur les diverses exceptions, toutes les parties défenderesses dans les deux instances principales, ainsi que les parties intervenantes, sauf M. Bouteron, ont déclaré ne pas vouloir conclure sur le fond :

III. *Au fond :*

Attendu, en fait, que le 19 Mars, 1896, le Gouvernement Égyptien a demandé aux Commissaires-Directeurs de la Caisse de la Dette Publique, l'autorisation de prélever sur le fonds de réserve général que les porteurs de titres de certains emprunts publics prétendent être affectés à leur garantie, une somme de £ E. 500,000 pour les besoins de l'expédition militaire de Soudan ;

Attendu qu'à la séance du 26 Mars, MM. Louis et Yonine ont déclaré que cet objet dépassant la compétence de la Commission de la Dette, celle-ci ne pouvait délibérer valablement et qu'ils s'opposaient au vote sur la demande de crédit ;

Attendu que leur avis n'ayant pas prévalu, ils se sont retirés ;

Que MM. Money, Morana, Baron de Richthofen, et Comte Zaluski, Commissaires, ont accordé au Gouvernement Égyptien l'autorisation qu'il demandait et lui ont remis de suite £ E. 200,000, et le 18 Avril, £ E. 150,000 ;

Attendu que c'est après cette autorisation et ce versement de fonds que le Syndicat

intolerable burden of the consular jurisdiction in civil as well as criminal matters, where foreigners were concerned, which was the

Herbault et consorts, MM. Louis et Yonine, en leur qualité de Commissaires de la Caisse de la Dette, et M. Bouteron, en sa qualité de Commissaire des Domaines, ont demandé la restitution au fonds de réserve général des dites sommes ;

Que le Tribunal a donc à trancher les questions suivantes :—

1. La Commission de la Caisse de la Dette Publique a-t-elle pouvoir pour autoriser le prélèvement, sur le fonds de réserve, des dépenses occasionnées par l'expédition de Dongola ?

2. Cette autorisation porte-t-elle atteinte aux droits acquis des porteurs de titres de la Dette Égyptienne ?

Attendu que la Caisse de la Dette Publique a été créée par Décret du 2 Mai, 1876 ;

Que dans le préambule du dit Décret il est formellement déclaré qu'elle a été instituée pour : "donner toute garantie aux intérêts des porteurs de titres . . . pour assurer le service régulier de la Dette Publique ; "

Que l'Article 1er de ce Décret porte qu'elle est chargée de recevoir les revenus affectés et de les " destiner exclusivement " au payement des intérêts et à l'amortissement de la dette ;

Que l'Article 4 confie à la Commission de la Dette la tutelle des garanties concédées aux porteurs de titres ;

Attendu que toutes ces dispositions du Décret de 1876 ont été confirmées par la Loi de Liquidation du 17 Juillet, 1880 ;

Attendu qu'il y a lieu tout d'abord de faire observer que la dite Loi, qui a modifié les engagements antérieurs pris par le Gouvernement vis-à-vis des porteurs de titres, a eu surtout pour objet d'assurer aux dits porteurs toute garantie dans l'avenir pour l'exécution des engagements pris vis-à-vis d'eux par l'État Égyptien ;

Qu'à cet effet, elle a établi le Budget de l'État et indiqué les sommes devant être affectées aux porteurs de titres et celles affectées aux besoins d'administration de l'État en décidant que les excédents de revenus seraient employés à l'amortissement ;

Attendu que le législateur prévoyant que l'équilibre du Budget établi par lui pouvait être détruit par de nouveaux emprunts, a interdit, par l'Article 37 au Gouvernement, de mettre aucun nouvel emprunt de quelque nature que ce soit, sans l'avis conforme de la Commission de la Dette ;

Attendu qu'il est donc dès à présent certain que, de par la Loi de Liquidation, tous les fonds qui doivent servir à l'amortissement sont, dès le moment où ils entrent à la Caisse de la Dette, *destinés exclusivement* à la garantie des porteurs de titres pour l'exécution des engagements pris vis-à-vis d'eux, et que cette destination ne peut être modifiée que par une nouvelle Loi ;

Attendu qu'à la suite des événements de 1882, l'amortissement a été suspendu, et il allait être repris, lorsque le Gouvernement Égyptien eut l'idée de proposer la création d'un fonds de réserve ;

Que dans la lettre en date du 19 Janvier, 1888, adressée par le Gouvernement Égyptien aux Commissaires de la Dette faisant part de son projet, il est dit qu'il s'agissait de parer :

" Aux diminutions de revenus ou aux charges *extraordinaires* qui, à la *suite d'événements imprévus*, peuvent déranger l'équilibre du Budget, et aux incertitudes des déficits essentiellement variables des Domaines et de la Daïra Sanieh ; "

Attendu qu'à cette lettre la Commission répondait de la manière suivante :—

" En principe nous avons reconnu les avantages que présenterait pour les créanciers mêmes de l'État, la constitution d'un fonds de réserve pouvant, le cas échéant, pour voir à l'insuffisance de revenus affectés, et créant ainsi une *garantie de plus* pour le service de la dette."

result of the capitulations, and which frequently gave rise in practice to the most scandalous abuses. The Courts were originally instituted for

Attendu qu'à la suite de cet échange de vues entre le Gouvernement et la Commission de la Caisse, le Gouvernement Égyptien a saisi officiellement les Puissances à la date du 3 Mars, 1888, et leur a demandé de donner leur assentiment au dit projet de Décret par la dépêche suivante :—

"Le Gouvernement de Son Altesse le Khédive vient de décider la création d'un fonds de réserve en vue de parer aux diminutions de revenus et aux *charges extraordinaires* qui peuvent *accidentellement* déranger l'équilibre budgétaire de l'État. Le but de cette mesure et les moyens propres à en assurer la réalisation, ayant recontré l'avis favorable de la Caisse de la Dette, le Gouvernement, de concert avec MM. les Commissaires de la Dette, a élaboré un projet de Décret qui règle l'organisation du fonds de réserve, son emploi et les dispositions législatives à intervenir pour sa constitution ;"

Il ajoutait : "Les porteurs de titres obtiendraient, ainsi, une garantie de plus par ce fait que, en cas d'insuffisance des revenus affectés, la réserve est *appelée* en *première ligne* à parfaire les sommes *nécessaires au service des dettes dont la Caisse de la Dette Publique est chargée*. . . .

"A un point de vue d'intérêt plus général, l'existence d'un fonds de réserve serait un gage précieux de sécurité et de stabilité pour les finances du pays ;"

Attendu qu'il ressort clairement des déclarations contenues dans les documents visés plus haut, que la création du fonds de réserve a été faite en vue de parer aux diminutions de revenus ou aux charges extraordinaires qui peuvent, à la suite d'événements imprévus, accidentels, déranger l'équilibre budgétaire de l'État, et que cette mesure est prise en vue de donner une garantie de plus aux porteurs de titres ;

Qu'en outre, il est bon de faire observer dès à présent que ce sont les ressources destinées à l'amortissement, ressources déjà spécialement affectées aux porteurs de titres par la Loi de Liquidation qui doivent servir à former le fonds de réserve général ;

Attendu qu'à la date du 12 Juillet, 1888, paraissait le Décret constituant le fonds de réserve, où il est dit à l'Article 3 :

"Le fonds de réserve est destiné :

"1. En cas d'insuffisance des revenus affectés à parfaire les sommes nécessaires au service des dettes dont la Caisse est chargée.

"2. A combler l'insuffisance des revenus non affectés pour pourvoir aux dépenses prévues par l'Article 18 de notre Décret du 27 Juillet, 1885, et autres consenties ou à consentir par les Puissances.

"3. A des dépenses extraordinaires engagées conformément à l'avis préalable de la Commission de la Dette. . . ."

Et l'Article 4 :

"L'amortissement des dettes sera repris dans les conditions énoncées à l'Article 22 de notre Décret du 27 Juillet, 1885, dès que le fonds de réserve aura été intégralement constitué pour être suspendu de nouveau quand et tant que par suite des prélèvements opérés en vertu de l'Article 3 ci-dessus, son capital sera inférieur à £ E. 2,000,000 ;"

Attendu qu'il est facile de voir, rien qu'à la simple lecture de la teneur de ces deux Articles, tout l'intérêt qu'ont les porteurs de titres à veiller à ce que le fonds de réserve général ne soit pas détourné de sa destination spéciale, le dit fonds de réserve devant parer aux déficits budgétaires possibles et ensuite permettre à l'amortissement de reprendre son cours ;

Attendu que c'est la teneur du paragraphe 3 de l'Article 3 du dit Décret :—

"Le fonds de réserve est destiné . . . à des dépenses extraordinaires engagées

a period of five years only, and at the expiration of this quinquennial period, the British Government, which required certain alterations in

conformément à l'avis préalable de la Commission de la Dette," qui donne lieu à la difficulté actuelle ;

Attendu que MM. Money, Morana, Baron de Richthofen, et Comte Zaluski ont soutenu dans leurs conclusions relatives à l'incompétence, qu'ils avaient le droit, aux termes du dit paragraphe, de voter toutes dépenses extraordinaires, de quelque nature que ce soit et ce, en vertu d'un mandat politique ; qu'ils ont même déclaré dans leurs conclusions que le Gouvernement est propriétaire des dits fonds ;

Attendu qu'il a déjà été établi que les dits Commissaires n'avaient pas de mandats politiques dans leurs rapports avec les porteurs de titres et que leur mandat était régi par le droit commun ;

Que le Gouvernement n'a pas le droit d'user des dites sommes comme propriétaire puisqu'elles ont été affectées à la garantie des porteurs de titres et qu'elles ne peuvent recevoir d'autres destinations que celles prévues par la dite Loi ;

Qu'il s'agit maintenant d'interpréter ce que signifie ces mots "dépenses extraordinaires" insérés au § 3 du dit Article 3 ;

Attendu que tout d'abord ces mots "dépenses extraordinaires" démontrent que le mandat des Commissaires est essentiellement limité et ne saurait s'étendre aux dépenses de toutes natures ainsi qu'on l'avance ;

Attendu que l'échange de correspondances entre le Gouvernement et la Caisse de la Dette Publique indique que par le mot "extraordinaires" on n'a entendu parler que des seules dépenses accidentelles imprévues qui pourraient déranger l'équilibre du Budget de l'État et porter ainsi atteinte aux intérêts des porteurs de titres ;

Attendu, en conséquence, que par "dépenses extraordinaires" on doit entendre celles qui sont motivées par un accident imprévu, telle qu'une crue anormale du Nil, l'incendie de certains bâtiments de l'État, etc., causes qui peuvent amener une diminution des revenus de l'État ou l'obliger à faire des travaux exceptionnels en vue de prévenir ou d'atténuer le mal, diminutions de revenus ou dépenses qui peuvent rompre l'équilibre du Budget ;

Attendu que cette interprétation qui s'impose, rien qu'à la lecture du passage des documents cités plus haut, se trouve très nettement expliquée par Mr. Milner, ancien Sous-Secrétaire de l'État au Ministère des Finances d'Égypte dans son ouvrage "England in Egypt" :

"L'Égypte," dit-il, "est un pays dont les revenus sont exposés, dans une proportion exceptionnelle, à être affectés par les accidents naturels (physical accidents). Que le Nil soit exceptionnellement haut ou exceptionnellement bas une année quelconque et le Budget est complètement bouleversé, bien que l'état général des finances du pays soit exceptionnellement bon. *Dans ces conditions*, un fonds de réserve est de première nécessité. . . ."

Attendu qu'en résumé le mot "extraordinaire" dont s'agit ne peut être interprété que de la manière suivante : dépenses exceptionnelles, accidentelles, imprévues, et au sujet desquelles les mandataires légaux des porteurs de titres ont le devoir de sauvegarder avant tout les droits des dits porteurs, objet principal de leur mandat ;

Attendu que le Gouvernement Égyptien et le Gouvernement Français ont du reste déjà interprété le dit Article dans ce sens, lorsqu'en 1890, le premier a proposé d'affecter une partie du fonds de réserve général à des dépenses militaires d'ordre intérieur, ce qui a été refusé ;

Qu'ainsi on reconnaissait à ce moment qu'on ne pouvait toucher au fonds de réserve général pour certaines dépenses militaires, sans l'assentiment des Puissances ;

Attendu que si les dépenses militaires d'ordre intérieur ne doivent pas être

the constitution of these Courts, only consented to renew for one year; and this yearly renewal continued for a few years until the required

comprises dans les dépenses extraordinaires dont parle le § 3 de l'Article 3, à plus forte raison celles nécessitées par l'expédition de Dongola, qui n'ont rien d'accidentel ni d'imprévu et n'ont certainement pas été faites en vue de sauvegarder d'une manière quelconque les droits des porteurs de titres.

Que dans tous les cas elles ne rentrent pas dans la catégorie de celles qui, aux termes du dit Décret, peuvent être autorisées par la Commission de la Dette, puisqu'il est reconnu par tous qu'elles sont d'ordre purement politique ;

Attendu que le Décret du 6 Juin, 1890, vient encore démontrer que le § 3 de l'Article 3 du Décret de 1888 ne peut avoir d'autre interprétation que celle qui a été donnée ci-dessus ;

Qu'en effet, il indique de quelle manière devra avoir lieu l'amortissement, et qu'il n'est que trop clair que si l'interprétation du Gouvernement était admise, c'est-à-dire que le fonds de réserve général peut être employé à des dépenses de toute nature, les porteurs de titres n'auraient plus de garantie, et leurs droits seraient illusoires ;

Qu'il est démontré qu'il n'appartenait pas aux dits Commissaires de consentir le prélèvement dont s'agit, pour une expédition militaire, prélèvement qui peut porter la plus grave atteinte aux droits des porteurs de titres, anéantir la garantie à eux exclusivement destinée par la création du fonds de réserve général ;

Attendu que seules les Puissances pouvaient donner un tel consentement et modifier la destination du fonds de réserve ;

Attendu que tant que cette modification n'a pas eu lieu législativement, il est du devoir des Tribunaux de faire observer les prescriptions contenues dans les divers Décrets en vigueur ;

Attendu que les Commissaires n'ayant ni qualité ni droit pour autoriser le dit prélèvement, il devient inutile de rechercher si leur décision devait être prise à la majorité ou à l'unanimité ;

Attendu, en ce qui concerne l'atteinte portée aux droits acquis des porteurs de titres, qu'il ne saurait être contesté que les sommes devant servir à l'amortissement, auront été spécialement affectées, que c'est avec ces sommes qu'a été formé le fonds de réserve général, et que dès lors en employant ces fonds à une autre destination que celle prévue dans le dit Décret, on diminue tout au moins leurs sûretés, soit pour le payement des coupons en cas d'insuffisance des revenus affectés, soit pour l'amortissement, si on ne les fait pas disparaître ;

Attendu que l'on a essayé de soutenir que le droit individuel de chaque porteur de titres ne saurait lui permettre de demander la restitution des sommes prélevées au delà de l'atteinte réellement portée à son droit acquis ; mais attendu qu'on oublie que la masse entière du fonds de réserve est globalement affectée à la garantie de chaque créancier comme à la garantie collective de tous ;

Qu'il y a là une indivisibilité de garantie dont on retrouve d'ailleurs le même caractère légal dans les autres sûretés réelles, tels que le gage et l'hypothèque, dont la totalité garantit chaque fraction de la dette (Article 669 du Code Civil Mixte, et 2083 et 2090 du Code Civil Français) ;

Attendu que la violation du Décret de 1888, dont s'agit étant établie, il importe de déterminer la responsabilité de chacun des défendeurs ;

Attendu que parmi les personnes assignées se trouvent : Mog Bey, en sa qualité de Contrôleur, et Mahdi Bey, en sa qualité de Caissier de la Caisse de la Dette ;

Attendu qu'aucune demande n'ayant été formulée à leur encontre, il y a lieu de les mettre purement et simplement hors de cause ;

Attendu, en ce qui concerne MM. Louis et Yonine, que les demandeurs Herbault et consorts, reconnaissant que les dits Commissaires ont à bon droit protesté contre la

modifications had been effected, when the quinquennial rule was resumed, and has since remained in force. The next occasion for the revision of these tribunals will be in 1898.

décision prise par la majorité de la Commission, ainsi qu'il résulte du procès-verbal de la séance du Jeudi, 26 Mars, 1896, versé au dossier, ont renoncé à l'action à leur encontre, et qu'il y a lieu de leur en donner acte ;

Attendu, en ce qui touche le Gouvernement Égyptien, qu'il est constant qu'il a retiré indûment des sommes provenant du fonds de réserve général ; qu'il y a lieu d'ajouter qu'en méconnaissant les engagements répétés pris par lui vis-à-vis des porteurs de titres et en violant des Décrets qu'il ne pouvait ignorer, puisqu'ils émanaient soit de sa propre initiative, soit d'un accord avec les Puissances, il a commis une faute grave, et que dès lors il doit être tenu de restituer, au fonds de réserve général, les sommes par lui prélevées, et de supporter les frais de l'instance ;

Attendu, quant à MM. Money, Morana, Baron de Richthofen, et Comte Zaluski, que c'est à tort qu'ils ont autorisé le prélèvement des dites sommes, au mépris des Décrets susvisés, qui leur donnaient pour mission de n'employer la réserve du fonds général que dans certains cas accidentels, mais toujours dans l'intérêt des porteurs de titres ;

Qu'en agissant ainsi, surtout après la protestation de deux de leurs collègues dont il a été parlé ci-dessus, il ne saurait être douteux que leur responsabilité personnelle est engagée ;

Mais, attendu que les demandeurs principaux et M. Bouteron ne concluant à leur condamnation personnelle qu'au cas d'inexécution par le Gouvernement du présent Jugement, il y a lieu de réserver, quant à présent, la décision sur ce point ;

Attendu, quant à MM. Gibson et Chekib Pacha, Commissaires des Domaines, que tout en s'étant ralliés aux fins et conclusions prises par le Gouvernement Égyptien et les Commissaires Money, Morana, Baron de Richthofen, et Comte Zaluski, on doit constater qu'ils ne se sont présentés que sur la sommation de MM. Herbault et consorts, et que, dès lors, les dépens de leur intervention doivent être supportés par la partie qui succombe dans l'instance ;

Attendu, en ce qui concerne l'exécution, que, bien que le droit d'ester en justice ait été reconnu à MM. Herbault et consorts, et à M. Bouteron, Commissaire des Domaines, et que, en principe, leurs conclusions soient accueillies, il importe de confier la dite exécution à MM. Louis et Yonine, soit collectivement, soit séparément, en la qualité qu'ils agissent, en laissant seulement à MM. Herbault et consorts, et à M. Bouteron, ès-qualités, le droit de faire exécuter le Jugement en ce qui concerne les dépens ;

Attendu, quant aux syndicats Zervudachi et consorts, Stagni et consorts, intervenants, que le Tribunal n'a qu'à leur donner acte de leur intervention, et mettre le dépens de leur intervention à leur charge ;

Par ces motifs :

Ouï le Ministère Public en ses conclusions :—

Joint les instances inscrites sous les Nos. 1404 et 1525 de la XXI. A. J., vu leur connexité ;

Donne acte de l'intervention de MM. Bouteron, Gibson, et Chekib Pacha, syndicats Zervudachi et consorts, Stagni et consorts ;

Se déclare compétent ;

Rejette toutes exceptions et fins de non-recevoir ;

Au fond :

Donne défaut contre le Gouvernement Égyptien MM. Money, Morana, Baron de Richthofen, et Comte Zaluski, Gibson, et Chekib Pacha, les syndicats Zervudachi et consorts, Stagni et consorts ;

There are three Courts of First Instance, viz. at Cairo, Alexandria, and Massowah. At Alexandria the tribunal is composed, it is believed,

Met hors de cause MM. Mog Bey et Mahdi Bey ;

Donne acte à MM. Herbault et consorts, de leur renonciation à l'action à l'encontre de MM. Louis et Yonine ;

Dit que les prélèvements de la somme de £ E. 350,000 opérés à la date des 26 Mars et 11 Avril, 1896, ont eu lieu en violation des droits conférés aux porteurs de titres par les Décrets susvisés ;

Condamne en conséquence le Gouvernement Égyptien à payer à la Caisse de la Dette Publique pour être versée au fonds de réserve général la dite somme de £ E. 350,000 pour les causes sus-énoncées, avec intérêts à raison de 5 pour cent l'an à partir du 26 Mars et du 18 Avril, 1896, ainsi que toutes sommes qui ont pu être prélevées ou seront prélevées pour le même objet, avec intérêts à raison de 5 pour cent l'an à partir de chaque prélèvement ;

Dit qu'il n'y a pas lieu de statuer quant à présent sur les conclusions prises à l'encontre de MM. Money, Morana, Baron de Richthofen, et Comte Zaluski ;

Ordonne à MM. G. Louis, A. Money, J. B. Morana, Baron de Richthofen, Comte Zaluski, et A. Yonine, en leur qualité de Commissaires de la Dette Publique, de retenir toutes les sommes qu'ils peuvent ou pourront ultérieurement avoir en mains appartenant ou revenant au Gouvernement jusqu'à concurrence des sommes qui auraient été prélevées dans les conditions rapportées ci-dessus, en y ajoutant les intérêts, et de les restituer au fonds de réserve général ; dit que les poursuites en exécution du Jugement ci-dessus auront lieu par toutes les voies légales aux requêtes et diligences de MM. Louis et Yonine, en leur qualité de Commissaires de la Dette, soit collectivement, soit séparément.

Condamne enfin le Gouvernement Égyptien en tous les dépens vis-à-vis de tous demandeurs ou intervenants, à l'exception des dépens de l'intervention des syndicats Zervudachi et consorts, Stagni et consorts, qui sont mis à la charge de ces derniers.

Prononcé à l'audience publique du Tribunal Mixte de Première Instance au Caire, siégeant en matière civile le 8 Juin, 1896. Présents : MM. Prunières, Président ; de Stoppelaar, de Sande y Castro, Ismaïl Bey Serri, Joseph Bey Aziz, Juges ; Neguib Bey Ghali, Substitut du Procureur-Général, et Luchesi, Commis-Greffier.

Le Président,
(Signé) PRUNIÈRES.

Le Commis-Greffier,
(Signé) LUCCHÉSI.

Pour copie conforme à l'original délivré, etc.
Le Commis-Greffier,
(Signé) DÉ FARRO.

Le Caire, le 9 Juin, 1896.

Judgment of the Court of Appeal.

Attendu que des divers appels relevés contre le jugement du Tribunal du Caire du 8 Juin dernier sont connexes, qu'il y a lieu d'en ordonner la jonction pour être statué par un seul et même arrêt.

Sur la compétence :—

Attendu que les appelants sans contester en principe la compétence des Tribunaux Mixtes soutiennent que les décisions prises par le Gouvernement d'accord avec la Commission de la Dette de prélever pour un usage déterminé une partie du fonds de réserve constituent un acte de gouvernement ou en d'autres termes, un acte de

of twelve foreign and five native judges; at Cairo, of nine foreigners and five natives; and at Massowah, of four foreigners and two natives.

souveraineté échappant par sa nature même et en vertu des principes généraux du droit public à l'examen et à l'appréciation de l'autorité judiciaire.

Qu'ils reconnaissent, cependant, qu'en publiant, avec l'assentiment des Puissances et après accord avec elles, la Loi de Liquidation du 17 Juillet, 1880, destinée à régler le passé, et à fixer pour l'avenir la situation financière du pays, le Gouvernement Égyptien a imprimé aux divers Décrets, qui ont établi et organisé la Caisse de la Dette, un véritable caractère contractuel;

Attendu, dès lors, que lorsque les Commissaires de la Dette sont sortis des limites du mandat que leur ont confié les Puissances, et qu'ils ont agi en dehors des cas prévus par le contrat, le consentement qu'ils ont pu donner est entaché d'excès de pouvoir et radicalement nul. De telle sorte que, même en admettant la théorie des appelants, il n'y aurait plus un acte de souveraineté, mais un acte illégal, tombant par cela même sous la juridiction des Tribunaux Mixtes:

Sur la recevabilité des demandes dirigées contre les appelants et des interventions:

Attendu qu'aux termes de l'Article 4 du Décret du 2 Mai, 1876, dont les Articles 38 de la Loi de Liquidation, 6 du Décret du 27 Juillet, 1885, et 2 du Décret du 6 Juillet, 1890, n'ont modifié ni le sens ni la portée, "les actions qu'au nom et dans l'intérêt des créanciers en grande partie étrangers, la Caisse, et, pour elle, ses Directeurs croiront avoir à exercer contre l'Administration Financière, représentée par le Ministre des Finances, pour ce qui concerne la tutelle des garanties de la Dette confiée à sa direction, seront portées dans les termes de leur juridiction devant les nouveaux Tribunaux, qui, suivant l'accord établi avec les Puissances, ont été institués en Égypte;"

Attendu qu'il suit de cette disposition que la représentation légale des droits collectifs des créanciers a été exclusivement confiée aux Commissaires de la Dette, et que les simples porteurs de titres ne peuvent agir que pour la défense de leurs droits individuels, tels que le paiement des coupons, ou le remboursement de la valeur de leur titre en cas d'amortissement, ou de toute autre cause analogue;

Attendu que les actions des deux groupes de créanciers, Herbault et consorts d'un côté, Zervudachi et consorts de l'autre, également sans qualités pour défendre les droits collectifs de la masse, sont donc irrecevables;

Attendu qu'il en est de même et pour les mêmes motifs des actions de M. Bouteron ès-qualités, et des deux autres Administrateurs des Domaines;

Attendu, en ce qui concerne MM. Louis et Yonine, Commissaires de la Dette, que leur situation n'est pas la même; qu'il convient de remarquer tout d'abord que l'Article 38 de la Loi de Liquidation a modifié les termes de l'Article 4 du Décret du 2 Mai, 1876, en accordant aux Commissaires de la Dette le droit d'action que ce Décret n'avait semblé accorder qu'à la Caisse et pour elle à ses Directeurs; que les appelants soutiennent que cette modification est sans portée, et n'a pas eu pour objet de changer la nature des droits des Commissaires; que le Gouvernement reconnaît toutefois "que l'Article 38 de la Loi de Liquidation, en reproduisant, sous une forme plus juridique, les dispositions de l'Article 4 du Décret du 2 Mai, 1876, a voulu enlever tout doute sur l'interprétation de ce Décret;" qu'on ne saurait comprendre, d'ailleurs, dans quel but les auteurs de la Loi de 1880 auraient modifié les termes de l'Article 4 du Décret de 1876, s'ils n'avaient entendu expliquer par cette modification que chaque Commissaire pris individuellement avait la faculté d'agir pour la défense des intérêts qui lui étaient confiés;

Attendu que les Commissaires, en effet, ont été investis du mandat de défendre les droits de l'ensemble collectif et international des créanciers, que soit dans l'intérêt de ceux-ci, en cas d'erreur ou de négligence de ses collègues, soit pour mettre sa

There is only one Court of Appeal, which sits at Alexandria, and is composed of thirteen judges, nine being foreigners and four natives.

responsabilité à couvert de tout recours éventuel, chacun d'eux, investi d'un pouvoir personnel, a donc le droit d'agir individuellement ;

Attendu qu'il y a lieu de constater qu'en 1884, dans le procès de la Caisse contre le Gouvernement Égyptien, MM. Baravelli et Vetsera, alors Commissaires de la Dette, auxquels on opposait, comme dans le procès actuel, leur défaut de qualité, soutenaient dans leurs conclusions que lorsque plusieurs personnes avaient reçu un même mandat légal, chacune avait, même isolément, le devoir et par conséquent le droit d'agir pour la défense des intérêts dont la garde leur avait été solidairement confiée. (Voir compte rendu de la Caisse, neuvième année, p. 111) ;

Attendu qu'en refusant à la minorité des Commissaires le droit d'agir, en cas d'erreur ou d'excès de pouvoirs contre le Gouvernement ou la majorité de leurs collègues, on mettrait les décisions et les actes de cette majorité en dehors de tout contrôle, et à l'abri de toute critique, ce qui n'a certainement jamais été dans la pensée des Puissances ; qu'on objecte vainement qu'en ce cas, ce serait aux Puissances elles-mêmes à statuer, ce qui serait manifestement contraire à la délégation qu'elles ont donné aux Tribunaux Mixtes, et rendre toute solution parfois impossible ;

Attendu que l'action de MM. Louis et Yonine est donc recevable.

Au fond :

Attendu que MM. Louis et Yonine soutiennent que le Gouvernement ne pouvait pas demander et les Commissaires accorder, sur le fonds de réserve, les sommes nécessaires pour l'expédition du Soudan, ces sortes de dépenses n'étant pas comprises parmi les dépenses extraordinaires prévues par le § 3 de l'Article 3 du Décret du 12 Juillet, 1888 ;

Attendu que cet Article porte que le fonds de réserve est destiné :

1. En cas d'insuffisance des revenus affectés, à parfaire les sommes nécessaires au service des dettes dont la Caisse est chargée ;

2. A combler l'insuffisance des revenus non affectés pour pourvoir aux dépenses prévues par l'Article 18 du Décret du 27 Juillet, 1885, et autres consenties ou à consentir par les Puissances ;

3. A des dépenses extraordinaires engagées conformément à l'avis préalable de la Commission de la Dette ;

Attendu que les appelants prétendent que les termes généraux du § 3 démontrent que le fonds de réserve peuvent servir à payer toute dépense imprévue ne figurant pas au Budget ordinaire, les dépenses de guerre comme toute autre dépense ;

Attendu qu'on doit, dans les conventions, rechercher quelle a été la commune intention des parties contractantes, pluôt que de s'arrêter au sens littéral des termes ; que toutes les clauses des conventions s'interprètent les unes par les autres ; qu'enfin quelque généraux que soient les termes dans lesquels une convention est conçue, elle ne comprend que les choses sur lesquelles il paraît que les parties se sont proposées de contracter ;

Attendu que ces règles sont applicables à l'interprétation du Décret du 12 Juillet, 1888, qui constitue entre le Gouvernement Égyptien et les Puissances un veritable contrat ;

Attendu que si l'on consulte les correspondances échangées entre le Gouvernement Égyptien et les Puissances au moment de la publication de ce Décret, on peut se convaincre qu'il n'y est fait aucune allusion à une expédition militaire, et spécialement à la réoccupation du Soudan ; qu'il importe peu que le Gouvernement prétende que dans sa pensée intime c'était surtout dans ce but qu'il avait consenti à créer un fonds

The nine foreign judges are made up as follows :—Great Britain, America, Germany, Austria-Hungary, Greece, Italy, and Russia, one judge each, and France, two.

de réserve, si rien dans ses actes ou dans ses communications n'a été de nature à faire connaître aux autres Parties Contractantes le but qu'il poursuivait ; qu'il était d'autant plus difficile aux Puissances de prévoir les intentions du Gouvernement sur ce point, que peu de temps auparavant Mr. Gladstone autorisait M. Waddington à faire savoir à M. de Freycinet que son Gouvernement avait renoncé définitivement à toute tentative de reprendre Dongola (voir No. 24 des documents diplomatiques sur les affaires d'Egypte, 1884 à 1893), et qu'on ne pouvait pas supposer que le Gouvernement Égyptien pût avoir des projets contraires ;

Attendu que si l'on rapproche les dispositions des §§ 2 et 3 de l'Article 3, on est amené à se demander comment les Puissances qui s'étaient réservé, dans le § 2, le droit de statuer elles-mêmes sur toutes les dépenses nouvelles, quelque minimes qu'elles soient, pouvant surcharger le Budget ordinaire, auraient pu, dans le § 3, donner à la Commission de la Dette le droit exorbitant de consentir seule des dépenses de guerre pouvant absorber d'un seul coup tout le fonds de réserve, au grand détriment du bon fonctionnement de la Caisse ;

Attendu que la disposition du § 3 portant que la dépense extraordinaire ne pourra être engagée qu'après avis préalable de la Commission de la Dette, suppose nécessairement que cet avis ne peut porter que sur des matières purement administratives ; qu'il est, en effet, certain que le mandat de la Commission de la Dette n'est qu'administratif et financier, et n'a auncun caractère politique, d'où la conséquence que les Puissances n'ont pu autoriser le Gouvernement Egyptien à engager avec le fonds de réserve des dépenses de guerre, c'est-à-dire, des dépenses essentiellement politiques, sur le simple avis préalable de cette Commission ;

Attendu qu'il faut en conclure que, malgré les termes généraux du § 3, les Puissances n'ont voulu entendre par dépenses extraordinaires que les dépenses administratives non prévues au Budget ordinaire et nécessitées soit par un événement de force majeure, tel que la rupture des digues du Nil, l'incendie ou la destruction d'un édifice public, une épidémie, ou tout autre cas de ce genre, soit par des travaux nécessaires destinés à augmenter le bien-être du pays dans un intérêt général, tel que l'ouverture de voies nouvelles, la création d'un musée, le dessèchement d'un marais malsain, ou tous autres besoins analogues ;

Attendu qu'en accordant au Gouvernement une somme de £500,000 à prendre sur le fonds de réserve pour l'expédition de Dongola, la majorité de la Commission de la Dette est donc sortie des limites de ses attributions, d'où la conséquence forcée que le Gouvernement doit restituer à ce fonds les sommes qu'il en a retirées, avec les intérêts de droit à partir du jour du retrait ;

Attendu que MM. Louis et Yonine n'ayant pas relevé appel incident du jugement attaqué, il n'y a pas lieu d'examiner si MM. Money, Morana, Baron de Richtofen, et Comte Zaluski auraient dû être condamnés conjointement avec le Gouvernement à la restitution de ces sommes ;

Attendu que la disposition du jugement attaqué, confiant à MM. Louis et Yonine l'exécution de la sentence, à l'exclusion de MM. Herbault et consorts et de M. Bouteron, est désormais sans objet ; qu'il n'appartenait pas d'ailleurs au Tribunal, pas plus qu'il n'appartient à la Cour, de régler le mode d'exécution à suivre, les intimés demeurant investi par la loi, du droit d'exécuter le jugement par toutes les voies de droit ainsi qu'ils l'entendront ;

Attendu que le Gouvernement et MM. Money, Morana, Baron de Richtofen, et Comte Zaluski, ès-qualités, succombant dans leurs appels, doivent être condamnés aux dépens envers MM. Louis et Yonine.

The foreign judges are nominated in form by the Egyptian Government, but in fact by the Government of that Power which has a vacancy to fill up in the Court.

The law administered is practically the French law—which is, no doubt, why France has two judges in the Court of Appeal—with some alterations and many omissions. Inasmuch as questions relating to personal status and capacity are generally withdrawn from the new jurisdiction, the whole of Book I. of the French Civil Code is omitted from the Egyptian Civil Code, and the latter commences with the matters dealt with in Book II. of the former. There are five Egyptian Codes, viz. the Civil, the Commercial, the Maritime, the Code of Procedure, and the Penal Code. The jurisdiction of the Courts extends to all matters other than those of personal status, arising between two or more foreigners, or between foreigners and natives. The criminal jurisdiction

Par ces motifs :

Après en avoir délibéré ;

Le Ministère Public entendu ;

Joint les appels relevés contre le jugement du Tribunal Civil du Caire du 8 Juin dernier ;

Et statuant par un seul arrêt ;

Confirme le jugement attaqué dans celles de ses dispositions par lesquelles le Tribunal a retenu sa compétence et déclaré l'action de MM. Louis et Yonine recevable, tant à l'égard du Gouvernement, qu'à l'égard de MM. Money, Morana, Baron de Richtofen, et Count Zaluski, Commissaires de la Dette ;

Disant droit au contraire aux appels du Gouvernement et de MM. Money et consorts, Commissaires de la Dette, et réformant quant à ce le jugement attaqué ;

Déclare les demandes et les interventions de MM. Herbault et consorts, Zervudachi et consorts, Bouteron, Gibson, et Chekib Pacha, irrecevables, et les rejette ;

Dit qu'il n'y a plus lieu dès lors de charger MM. Louis et Yonine de l'exécution de la sentence qui leur appartient de droit, pas plus que d'ordonner le mode suivant lequel elle serait exécutée ;

Émendant pour le surplus :

Dit que MM. Money, Morana, Baron de Richtofen, et Count Zaluski, Commissaires de la Dette n'avaient ni pouvoir ni qualité pour autoriser le Gouvernement à prélever sur le fonds de réserve une somme de £500,000, pour pourvoir aux dépenses de l'expédition de Dongola ;

Condamne en conséquence le Gouvernement Égyptien à restituer au fonds de réserve de la Caisse de la Dette la dite somme de £500,000, avec les intérêts de droit depuis le jour des retraits.

Condamne le Gouvernement envers MM. Louis et Yonine aux dépens de première instance, et conjointement avec MM. Money, Morana, Baron de Richtofen, et Count Zaluski, ès-qualités, aux dépens d'appel ;

Laisse à la charge des autres parties tous les frais par elles exposé en première instance et en appel.

Prononcé le 2 Décembre, 1896.

Le Président,
(Signé) MAURICE BELLET.

Le Greffier,
(Signé) R. LEVI.

of these Courts is very limited, being confined to minor misdemeanours (*contraventions*), and to certain offences committed against the judges, or the Courts themselves.

It is not our purpose here to give an exhaustive account of the working of these tribunals. For details concerning them readers may be referred to the treatises mentioned in the note.[1] It may, however, be observed that in general they have been a success, and have administered the law of the Egyptian Codes with ability and fairness. It is true that there exists just now in England a strong, and perhaps a not unnatural feeling of irritation against them, by reason of their recent decision in the matter under discussion; and emphatic expression was given to this sentiment in the recent speech of the Chancellor of the Exchequer. But it may perhaps be suggested, without impropriety, that little would have been heard in this country about the political bias of these Courts—a bias, be it observed, which it would be almost impossible to entirely eradicate in Courts so constituted, and in a country where political and national feeling runs so high as in Egypt—if the decision arrived at had been in our favour. Nevertheless, the Chancellor of the Exchequer expressed himself with great asperity concerning them. "I am bound to say," he said, "that in my opinion the time has arrived when the constitution and powers of these mixed Courts ought to be reconsidered. Very grave questions ought to, and must, arise as to what shall be their powers and authorities in the future, and whether they shall be allowed, in this way, to interfere in plans and *usurp authority which ought not to belong to them, but has been deliberately entrusted by the great Powers to another power altogether.*" This is very severe criticism. Let us see how far it is justified, and for this purpose we will consider the conclusions arrived at under the following heads:—

I. Jurisdiction.
II. *Locus standi* of the Plaintiffs.
III. Merits of the Case.

I.—Jurisdiction.

Assuming, said the Egyptian Government, in effect, that we have exceeded our rights, the matter is not one which can be properly dealt

[1] Cf. "The Mixed Courts of Egypt," by W. E. Grigsby, *Law Quarterly Review*, vol. xii., No. 47; "England in Egypt," by Sir A. Milner (London, 1894), p. 53. "De la Condition juridique des français en Égypte," par Louis Laget, Avocat (Paris, 1890); "Les tribunaux mixtes d'Égypte," Paul Fauchille, *Revue de droit international public, t. I.* 1894, *p.* 130; "Documents relatifs à l'établissement des tribunaux de la Réforme," dans "*La Législation Égyptienne annotée*," par Borelli Bey (Au Caire, 1892).

with by the Courts of law, who have no jurisdiction to interfere with political and governmental acts. In its original "*conclusions*" or pleadings the demurrer was formulated as follows :—

"Attendu que la décision prise par le Gouvernement, d'accord avec la Caisse de la Dette, d'affecter à un usage déterminé une partie du fonds de réserve constitue un acte de Gouvernement ou, en d'autres termes, de souveraineté, qui échappe, par sa nature même, à l'appréciation ou à l'examen de l'autorité judiciaire."[1]

In the "Acte d'appel," of June 11, after the first judgment, the same plea was reproduced more fully—

"Attendu qu'à tort le Tribunal du Caire s'est déclaré compétent ;

"Que l'acte par lequel le Gouvernement Égyptien a décidé — avec le consentement de la Caisse de la Dette — de prélever sur le fonds de réserve, institué par le Décret du 19 Juillet, 1888, une somme de 500,000 livres Égyptiennes pour faire face aux dépenses de la réoccupation de la province de Dongola constitue un acte de souveraineté ;

"Que les mesures prises par le Gouvernement pour l'organisation ou la disposition de ses finances publiques sont, en effet, ainsi que l'a proclamé la Cour dans son arrêt du 22 Avril, 1880 (Sursock contre Gouvernement), des actes de souveraineté échappant par leur nature même, au contrôle de l'autorité judiciaire ;

"Que, postérieurement audit arrêt, l'organisation fiancière de l'Égypte a fait, il est vrai, l'objet d'arrangements internationaux (Loi de liquidation, Convention de Londres, etc.) qui ont eu pour but et pour effet d'apporter des restrictions à la souveraineté du Gouvernement Égyptien, en matière de finances publiques ;

Qu'il s'ensuit que le Gouvernement ne peut déroger aux dits arrangements qu'avec le consentement des Puissances, sauf, bien entendu, pour certains actes spécialement prévus et qu'aux termes des mêmes arrangements il peut faire avec le simple consentement de la Caisse de la Dette ;

"Qu'il s'ensuit également que toute mesure prise avec le consentement soit des Puissances, soit de la Caisse de la Dette, suivant les cas, revêt le caractère d'un acte de pleine souveraineté."

The law upon the matter is contained in Article 11 of the "Règlement d'organisation judiciaire," which is practically the written constitution of the new tribunals. It is as follows :—

"Ces tribunaux, sans pouvoir statuer sur la propriété du domaine public ni interpréter ou arrêter l'exécution d'une mesure administrative, pourront juger, dans les cas prévus par le code civil, les atteintes porteés à un droit acquis d'un étranger par un acte d'administration."[2]

[1] The majority of the commissioners of the Caisse maintained that the assent of the Caisse was to be assimilated to the assent of a Parliament in a constitutional government to the employment of the public funds, and the assent once given, the act of sovereignty was perfect. The contention of both defendants was thus practically the same, with a slight difference in form.

[2] Cf. too Article 10 :—"Le gouvernement, les administrations, les daïras de S. A. le Khêdive et des membres de sa famille seront justiciables de ces tribunaux dans les procès avec les étrangers." And art. 38 of the Law of Liquidation hereinafter referred to.

Upon this provision there have been numerous decisions, and amongst others the "Arrêt Sursock," referred to in the pleadings. In the first place there is some difference of opinion as to the precise meaning to be attached to the words "mesure administrative" and "acte d'administration."

In an argument prepared by Professor Dicey, of Oxford, to assist the Egyptian Government (Egypt, No. 1, 1897, p. 30), the learned professor says :—

"The jurisdiction of the Courts, which, be it remarked, were apparently intended to succeed to the jurisdiction of the Consular Courts, depends, for the present purpose, on Article 11 of the Charter of the Mixed Courts ('Règlement d'Organisation'), with which read decree of May 2, 1876, Article 4, and Law of Liquidation, Article 38.

"The jurisdiction of the Courts originates in, and depends upon, Article 11, which runs as follows:—

"These Courts, without possessing the power either to interpret or arrest the execution of an administrative measure ('mesures administratives'), can judge in the cases provided for by the Civil Code all interference with ('les atteintes portées') any acquired right of a foreigner by an act of the Administration ('acte administratif').

"Now, the transaction complained of in the present case is a diminution by the Egyptian Government of the security for the payment of the Debt, and this diminution is caused by the Government borrowing from the Caisse £500,000 for the purpose of 'the rescue of the lost Province of Dongola.'

"Now, this transaction is an administrative measure ('mesure administrative'); it is not an injury resulting from an administrative act ('acte administratif').

"What the Courts are asked to do is to interpret, *i.e.* to pronounce, upon the character of an administrative measure, and to arrest its execution. But this is exactly what the Court has no jurisdiction to do.

"*The distinction between an administrative measure and administrative act is plain to any one who is familiar with the nature of what is known in the French legal system as 'droit administratif.'*

"Before a French 'Tribunal Administratif' a party injured by an administrative act, *e.g.* the taking of his land by the Government, can obtain compensation, but an Administrative Court, a 'Tribunal Administratif,' certainly will not interfere with the administrative action, *i.e.* 'mesures,' of the Government.

"See 'Dicey on Law of Constitution' (Fourth Edition, pp. 313–316).

"Now, in Egypt there are no Administrative Courts, *i.e.* 'Tribunaux Administratifs,' and the object of Article 11 was to give to the Mixed Courts the jurisdiction, and certainly not more than the jurisdiction, exercised under French law in cases where the Government is concerned, by Administrative Courts ('Tribunaux Administratifs').

"There is nothing in the Law of Liquidation (Article 38) to extend the jurisdiction of the Courts beyond Charter (Article 11). The effect of Article 38 is to make the Commissioners the legal representatives of the bondholders, etc., but it does not extend the jurisdiction of the Courts."

Now, with the very greatest deference to so great an authority, we venture to doubt whether the distinction between an "administrative measure" and an "administrative act" which it is said is plain to any one who is familiar with the nature of what is known in the French legal system as "droit administratif"—can, in fact, be

supported, and still more, whether any such distinction was intended by the framers of Article 11.

The expression "mesure administrative" is not a technical expression in French law. The usual term is "acte administratif," and neither in the monumental treatise of M. Batbie on the "Droit public et administratif," in eight volumes (Deuxième edition, Paris, 1885), nor in any other work upon the same subject with which we are acquainted, is there to be found a discussion concerning "les mesures administratives," as distinguished from "les actes d'administration" or "actes administratifs." There is, of course, no reason why this term should not be employed as synonymous with "acte administratif," and it is submitted that it was so intended to be employed in Article 11.

On the other hand, the distinction between an "acte administratif" and an "acte gouvernemental," upon which the Government relied,[1] is well established in French law.

"Le contentieux administratif," says M. Batbie (vol. vii. p. 413), "ne s'étend pas aux actes de gouvernement, car cette matière n'appartient ni au contentieux administratif, ni au contentieux judiciaire. Quelles sont donc ces affaires qui n'ont pas de juges et de qui relèvent les injustices qui pourraient etre commises? Ce sont des affaires qui relèvent de l'opinion publique et des pouvoirs politiques."

Mr. Fuzier-Herman ("Séparation des pouvoirs." Paris, 1880) says:—

"Quant aux actes portant sur des intérêts individuels, ils se divisent d'abord en actes gouvernementaux et actes administratifs. Les actes gouvernementaux sont considérés comme souverains; ils ne sont susceptibles d'ancien recours devant les tribunaux."[2]

But when we come to inquire what is an "acte gouvernemental," as distinguished from an "acte administratif," we find considerable difficulty. M. Batbie does not attempt a definition, but gives examples merely, such as acts of war, the division of indemnities having a political character, decisions of parliamentary commissions for the revision of military rank conferred during a campaign, acts or negligences of diplomatic agents abroad, acts of military authority at home, the collation of nobiliary titles, etc., in respect of all of which matters there is no redress; and Mr. Fuzier Herman quotes the case of the

[1] Professor Dicey evidently maintains that a "mesure administrative" is the same thing as an "acte de gouvernement" or "acte gouvernemental," but he gives no authority for such a proposition, nor do we believe that any can be adduced.

[2] See also J. B. Simonet, "Traité elementaire de droit public et administratif." Paris, 1890, p. 155.

seizure, under the second Empire (in 1863), of the Duc d'Aumale's work on the "Histoire des princes de la Maison de Condé."[1]

But if it is difficult to say exactly what is an "acte gouvernemental," affirmatively, it is easy to point out one thing which it is not, and thus to arrive at a sort of negative definition. It is not a violation of a contract, nor has it any reference to a contractual relation. It is an act of authority, committed by a Government or one of its agents in the public interest, which may cause loss or injury to a third party, but upon which it is nevertheless impossible to found an action. In fact, a *damnum sine injuriâ*.

Now, the right of the Egyptian Government to employ the money of the general reserve fund, even with the assent of the Caisse de la Dette, for the expenses of the Dongola Expedition, depended, it would seem, upon the interpretation to be given to the terms of the decree of July 12, 1888, which established the fund, and to the previous decree of May 2, 1876, instituting the Caisse, these decrees being in the nature of contracts entered into by the Egyptian Government with the Powers. It is difficult to see how an act which depended for its validity upon the interpretation of a contract could be called an "acte de gouvernement," in its technical sense, or brought within the category of such Acts as are above described and illustrated by the recognized authorities on administrative law. And, if it be admitted, as indeed it can hardly be denied, that the legislative provisions establishing the Caisse and the reserve fund were nothing more than contracts with the Powers, made by Egypt for the settlement of her liabilities,[2] it seems equally difficult to maintain that a violation of such contracts was not a matter within the jurisdiction of the Mixed Courts, as defined

[1] A similar case has occurred quite recently. At the end of September last, one M. Raoul de Vaux, the president of an Orleanist Association, known as "l'œillet blanc," ordered 200,000 portraits of the Duc d'Orléans, with the words, "Vive le Duc d'Orléans" at the foot of each card, the intention being to distribute these cards amongst the crowds during the visit of the Emperor of Russia to Paris. The Prefect of Police had them seized at the printers, and reduced to pulp. M. de Vaux thereupon brought an action against the prefect "for infringement of the sacred rights of private property." The defence is that M. Lépine, the prefect, performed an "act of gouvernement" beyond the competence of the Court, and strictly within the limits of his functions. Judgment on the merits has not yet been given.

[2] We may recall the terms of the Cairo Judgment:—"Il est inutile de rappeler ici les divers arrêts qui décident que 'les traités internationaux régissant les emprunts publics constituent une limitation à l'exercice du droit éminent de l'Etat emprunteur, et confèrent aux porteurs de titres une base légale des droits acquis que les tribunaux mixtes sont dès lors compétents, aux termes de l'article 11 du Règlement d'organisation judiciaire, pour statuer sur les atteintes que tout acte gouvernemental, toute mesure administrative contraire à ces traités, peuvent faire subir aux droits d'etrangers porteurs de titres.'"

by Article 11 of the Règlement d'organisation judiciaire. And this brings us to what we conceive to be the natural and rational meaning of this article, which we should paraphrase as follows :—

"These Tribunals, without possessing the power to interpret or arrest the execution of an administrative measure—or administrative act, since we believe these terms to be synonymous[1]—can deal in the cases provided for by the Civil Code, with any violation *by such administrative act*, or measure, of the vested rights of a foreigner."

That is to say, these Courts cannot prevent the Government—by injunction or otherwise—from doing any act of an administrative nature, or, in fact, of any other nature, which it sees fit to accomplish; but if such an act interferes prejudicially with the vested rights of third parties, these Courts are expressly empowered to take cognisance of such interference, and to give damages or to order repayment of sums thus misapplied or misappropriated. This is a perfectly well recognized principle of public law. Governments cannot be prevented by any system of law, or judicial organisation, from acting as they think proper, in the exercise of their sovereign rights, and in any manner which they consider to be for the public benefit; but if in so acting, they violate engagements into which they have entered, they must pay the penalty.

Let us give an instance of our meaning. In a recent international arbitration, which is not yet terminated—that concerning the Delagoa Bay Railway, in which the Governments of Great Britain, America, and Portugal are engaged—the Portuguese Government, having granted a concession for the building of a railway from Delagoa Bay to the frontier of the Transvaal, arbitrarily confiscated the concession, after a large amount of money had been spent upon it by the concessionaire, on the pretext that the latter had not fulfilled his obligations. Thereupon the concessionaire demanded an indemnity for this illegal act, and succeeded, by diplomatic intervention, in compelling the Portuguese Government to arbitrate.

But the plea this Government set up in the arbitration was that the granting and the confiscation of the concession were both "acts of sovereignty"—a favourite plea with Governments—for which it was not properly amenable to any jurisdiction whatever. The concessionaire

[1] This view is supported by the terms of the Arrêt Sursock, of April 22, 1880, in which the Court said :—

"Dans ces conditions il s'agit d'un *acte d'administration*"—not, be it noted, "une mesure administrative"—"que les tribunaux ne peuvent pas interpreter et dont ils n'ont pas le droit d'arrêter l'exécution."

It is a "*mesure administrative*," which Article 11 provides that the tribunals cannot interpret or arrest. Therefore, it is clear the Court considered these expressions to be interchangeable.

took the opinion, upon this point, of two French jurists of the highest repute in matters of international law—Messrs. Ch. Lyon-Caen and Louis Renault, of the Paris Faculty of Law, who expressed themselves upon this question in the following terms :—

"On commet, nous semble-t-il, une véritable confusion. Sans doute le gouvernement portugais, en faisant la concession du chemin de fer, n'a pas traité comme aurait fait un simple particulier, ni au point de vue de la forme, ni au point de vue du fond ; il n'a pas disposé d'un droit de nature privée ; il a traité en qualité de souverain, et parce qu'il avait des droits de souveraineté. Cela n'empêche pas que dans l'exercice de ce droit de souveraineté *il a pris des engagements et par suite conclu un véritable contrat*—Eh bien ! les demandeurs prétendent que le Portugal n'a pas tenu ses engagements et qu'il doit réparer le préjudice causé par leur inexécution."

And in the same matter the eminent Swiss professor of international law, Dr. Meili of Zurich,[1] says :—

"L'État ne peut pas se fonder sur son autorité souveraine pour se soustraire aux engagements qu'il a pris."

It is submitted that the cases are parallel, and that it was precisely this distinction which the framers of Article 11 had in view.

Let it be granted that the Egyptian Government, in obtaining from the Caisse a sum of money out of the general reserve fund, and applying this sum to a specific purpose, was exercising an act of sovereignty (or even only an administrative measure, since in the present case it is unnecessary to put it any higher) which the mixed tribunals were powerless to arrest or to interpret. Let it be granted also that it performed an act of sovereignty, or a governmental act when it promulgated the Law of July 12, 1888. It is none the less true that by this law it undertook certain engagements towards the Powers—viz., among others, that the general reserve fund should only be applied to a particular purpose—and that by its action with regard to this fund, in 1896, it violated, *ex hypothesi*, these engagements which constituted the vested rights of third parties—"un droit acquis à un étranger." The matter thus became one with which the mixed tribunals were expressly empowered to deal by Article 11, before quoted.

It only remains to distinguish the matter from the decision in the Sursock case, upon which the Government relied, and that is easily done. That decision—of which the date is April 22, 1880—was that the action of the Khedive in reducing the interest upon the unified public debt was not a matter which fell within the jurisdiction of the mixed

[1] Author, amongst other works, of "Der Staatsbankerott und die moderne Rechtswissenschaft," which deals largely with Egypt.

courts because the Khedival decrees of May 7 and November 18, 1876, were neither international treaties nor of the nature of civil contracts, and accordingly conferred no vested rights on any one. But, be it observed—and it is a consideration of paramount importance—this action of the Khedive was prior to the Law of Liquidation of July 17, 1880,[1] and the subsequent decrees which were most undoubtedly contracts entered into by Egypt, in its character of a bankrupt debtor, with the Powers, its creditors. The situation, since July 17, 1880, is not analogous with the state of things at the time of the decision in the Sursock case of April 22, 1880.

For these reasons it is submitted that upon this question the plaintiffs were in the right, and that the mixed courts *had* jurisdiction in the matter, and were obliged to exercise it.

II.—Locus Standi of the Plaintiffs.

Assuming that the Courts have jurisdiction, the Government proceeded, neither Messrs. Herbault and Co., representing the bondholders of the unified debt, nor Mr. Bouteron, representing the bondholders of the Domains loan, nor the two French and Russian commissioners, being a minority of the Caisse, have any power to sue the Government. The Caisse alone, as a corporate body, has power to sue, and its decisions, like those of any other corporate body, are taken by a majority of votes.

First, as to the bondholders. The Cairo Tribunal held that they had the right to sue, inasmuch as the powers given to the Caisse by Article 4 of the decree of May 2, 1876, and Article 38 of the Law of Liquidation of July 12, 1880, were cumulative powers, and were not intended to exclude the action of the bondholders themselves. The Court of Appeal, on the other hand, decided that the bondholders were represented by the members of the Caisse de la Dette, to the exclusion of any collective action on their part, and that accordingly they could not sue in their own names. This decision was based simply upon the terms of Article 4 of the decree of May 2, 1876, which, it was declared, had not been modified, in this respect, by Article 38 of the Law of Liquidation, Article 6 of the decree of July 27, 1885, concerning the guaranteed loan, or Article 2 of the decree of July 6, 1890, concerning the new Privileged Debt.[2] This provision is as follows:—

[1] We are, of course, aware that even prior to the Law of Liquidation there had been certain agreements between Egypt and her creditors by a series of decrees from 1876 to 1878. But the Law of Liquidation may be considered as the starting-point and fundamental basis of the modern situation of Egypt towards her creditors.

[2] Under this decree the Commissioners are expressly constituted the representatives

"Les actions, qu'au nom et dans l'intérêt des créanciers en grande partie étrangers *la Caisse, et pour elle ses directeurs*, croiront avoir à exercer contre l'administration financière, représenteé par le ministre des finances, pour ce qui concerne la tutelle des garanties de la Dette, confiée à sa direction, seront portées dans les termes de leur juridiction devant les nouveaux tribunaux qui, suivant l'accord établi avec les Puissances, ont été institués en Egypte."

It follows, said the Court, that the legal representation of the *collective* rights of the bondholders has been exclusively confided to the commissioners of the Caisse, and the bondholders themselves can only sue in defence of their *individual* rights, such as the payment of their coupons, etc.

We entirely agree with this decision; but even in the absence of the legislative provision in question, we submit that it was impossible to arrive at any other conclusion. It was admitted by the Cairo Tribunal that the commissioners of the debt had been constituted by law the "*mandataires légaux des porteurs de titres*,"[1] and they are expressly compared, in the judgment, to all other "mandataires légaux," such as syndics of a bankruptcy, etc. This is, no doubt, quite accurate, but when, after such a declaration, the Tribunal goes on to say that inasmuch as the commissioners are "the legal representatives of the bondholders, they are invested with a civil mandate, governed by the rules of the common law," and that *consequently* those whom they represent can go behind their backs and sue without their assistance, we can only express our amazement at so extraordinary a theory!

Who ever heard of any person, or body of persons, whose pecuniary interests the law had confided to a legal representative (mandataire légal), being able to sue in his own name and without the assistance of his legal representative? The commissioners of the Caisse, says the

of the Powers, guaranteeing the loan of 1885, and it was argued that this showed the political character of the functions of the Caisse. The Cairo Tribunal held that this decree did not in any way alter the purely civil nature of the legal mandate of the commissioners as regards the bondholders. Besides this financial delegation of authority, the commissioners have, in some instances, been invested with *temporary* political functions, as in the case of the draft Bill concerning stamps and patents.

[1] Cf. too, Babled, *loc. cit.* Le procès de la Caisse de la Dette Egyptienne devant la Cour mixte d'Alexandrie, p. 541 :—"Nous sommes donc bien dans le cas d'un mandat légal." We may protest, in passing, against the extremely intemperate language of this writer, who is apparently a professor at the French School of Law in Cairo, and who declares the judgment of the Cairo Tribunal to be "*la première revanche du droit, depuis quatorze ans, sur un régime de mensonge et de force brutale!*" It is painful to see a professor—a person presumably entrusted with the education of youth—writing upon a legal question in a learned Review, sink to this distressing level of vulgar vituperation.

Tribunal, are like syndics of a bankruptcy,[1] and the analogy is quite correct, since, when they were first instituted, Egypt was, in fact, bankrupt, and the Caisse was established to look after the interests of its creditors.[2] Well, then, we may ask, can the creditors in a bankruptcy, who are collectively represented by the syndic, go behind his back and sue their debtor individually? Evidently not. The rule is too well settled to require authority; but it is so well expressed in the leading French work on commercial law,[3] that we may quote the passage here:—

"La règle d'après laquelle le jugement déclaratif suspend les poursuites individuelles que les créanciers voudraient diriger contre le failli se déduit tout naturellement *du principe du dessaisissement et de la concentration de l'administration entre les mains des syndics.* Un créancier ne peut améliorer sa condition au détriment des autres; les poursuites qu'il exercerait ne pourraient donc avoir pour effet de lui procurer le paiement de ses créances. Il ne peut davantage poursuivre, en prétendant que c'est dans l'intérêt de tous les créanciers qu'il agit; *les syndics sont seuls chargés de cet intérêt collectif*, c'est à eux à administrer et à réaliser l'actif comme ils de jugeront convenable, sous le contrôle du juge commissaire. Leur gestion serait entravée par les poursuites qu'il plairait à chaque créancier d'exercer et qui ne feraient qu'entraîner des complications et des frais."[4]

And so it is with regard to every other person represented by a legal mandatory or agent—such as the infant represented by his father, the

[1] It is somewhat remarkable that the Cairo Tribunal, which applied with such rigour to the mission of the commissioners the principles of civil law with regard to agency (le mandat), failed entirely to perceive the applicability, in at least an equal degree, of the principles of commercial law to an agency which they themselves compared to that of a trustee in bankruptcy (syndic).

[2] Cf. Mr. H. Saint Marc, *loc. cit.*, p. 473: "Qu'est ce que la Commission de la Dette? quels sont ses pouvoirs? Pour comprendre la situation il faut se représenter l'État Egyptien comme un failli dont la gestion est surveillée et sans cesse contrôlée par un comité de syndics. Ce comité c'est la Commission de la Dette publique Égyptienne, préposé à la Caisse du même nom."

[3] Traité de droit commercial par Ch. Lyon-Caen et L. Renault, Paris, 1897, tome septième, p. 200.

[4] See too Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), sect. 9:—"On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the Court, and on such terms as the Court may impose." And Article 228, Code de Commerce mixte:—"Les créanciers ne peuvent intenter une action au nom du failli qu'à leur frais et risque, et en appelant les syndics au profit de qui la condamnation devra être prononcée s'il a lieu."

ward by his guardian, the lunatic by his committee, and the shareholders of a limited company by the board of directors.

The Cairo tribunal seems to have considered that, by refusing the bondholders a right of action against the Government, it would deprive them of all remedy, even against the commissioners.[1]

This is a manifest confusion of ideas. It by no means follows that, because a body of persons are represented by certain agents who are their legal representatives, or *mandataires légaux*, in their dealings with the outside world, these agents are not answerable to their principals for the due execution of their mission.[2] The rule is precisely the contrary, and the ordinary principles of agency are as applicable to that of a *mandataire légal* as to any other.[3]

Take the case of shareholders in a limited company. In the company's dealings with third parties the shareholders are represented by the board of directors, and they could not bring actions in their own names against such third parties for enforcing their rights as shareholders in the company. "In any proceedings brought to recover property of the corporation, the corporation—which is represented by the board of directors—is the only proper plaintiff."[4]

Nevertheless the shareholders can bring an action against the directors, in their own name, to restrain them from doing anything illegal. Indeed, a single shareholder, suing on behalf of himself and others, or suing alone and not on behalf, may make the company a defendant, and may restrain the company and directors from doing an act which is illegal, or *ultra vires* the corporation, and which a majority are consequently unable to affirm.[5]

[1] See the Judgment:—"Attendu que si la thèse soutenue par les demandeurs en exception était admise on arriverait à proclamer l'irresponsabilité complète des commissaires de la Caisse, de telle sorte qu'ils n'auraient plus une souveraineté limitée, comme ils l'ont prétendu, mais un pouvoir absolu. Qu'en effet ils pourraient répondre à l'autorité qui les a nommés mandataires qu'ils n'ont pas à lui rendre compte de leur mandat, mais bien aux porteurs de titres, leurs mandants, et à ceux-ci, qu'ils ont été dépouillés de toute action contre eux et il en résulterait qu'ils n'auraient aucun compte à rendre à personne, ce qui est inadmissible."

[2] Cf. Politis, *loc. cit.*:—"Les commissaires qui participent à un vote contraire aux lois engagent leur responsabilité vis-à-vis des creanciers qu'ils représentent et ceux-ci peuvent leur demander réparation conformément à l'article 212 du code civil Egyptien" (1382 of the French Civil Code).

[3] See Articles 638, 639, 645, of the Egyptian Civil Code (1992 and 1993 of the French Civil Code).

[4] *Gray* v. *Lewis* (8 Ch. 1035); *Duckett* v. *Grover* (6 Ch. D. 82); Lyon-Caen and Renault, *loc. cit.*, t. II. p. 609; and Law of July 24, 1867, Articles 17 and 22.

[5] *Hoole* v. *Great Western Railway Co.*, 3 Ch. 262; *Const.* v. *Harris*, T. & R. 518, 519; *Hope* v. *International Financial Society*, 4 C. D. 327. For French companies see Law of July 24, 1867, Article 17:—"Des actionnaires représentant le vingtième au moins du capital social peuvent dans un intérêt commun charger à leurs frais

The same principles apply, it is submitted, to the relations between the bondholders, the Caisse, and the Egyptian Government, or other third parties, and though the bondholders, being represented by the commissioners of the Caisse, had no action against the Government, yet if the commissioners of the Caisse had in fact exceeded their powers, the action of the bondholders against them was fully justified, and quite in accordance with the legal principles applicable to the case.

As regards this latter point, such appears to have been in fact the view taken by the Cairo Tribunal, which expressed the opinion that the commissioners had committed a fault which rendered them liable towards the bondholders.[1] Judgment, however, was not given against them because the plaintiffs had only proceeded against them alternatively, and in the event of the Egyptian Government failing to execute the judgment asked for against it. The tribunal accordingly reserved this point for further consideration, and consequently it did not come before the Court of Appeal at all.

Secondly, as to the minority of the commissioners of the Caisse.

This institution was created in 1876, and originally there were only four commissioners, representing Great Britain, France, Austria-Hungary, and Italy. But in 1895 representatives for Germany and Russia were added by decrees of February 19 and March 6 of that year. The Caisse was reorganized by the law of liquidation, and its powers were extended, by decree of July 27, 1885, to the guaranteed loan, and by decree of June 6, 1890, to the new privileged debt. Besides these fundamental decrees which constitute the international constitution of the Caisse, it is governed by other similar decrees, such as that of July 12, 1888, to which further reference will be made. Space prevents our giving any account of the working of this institution or the *rôle* it plays in the complicated system of Egyptian finance, but these matters will be found fully and lucidly described in Sir Alfred Milner's admirable work entitled, "England in Egypt."[2]

Roughly speaking, the Caisse is an international body established to watch over the financial operations of the Egyptian Government, in the interests of its creditors, with a view to protecting these interests and insuring the payment of the coupon. Perhaps the most prominent

un ou plusieurs mandataires de soutenir tant en demandant qu'en défendant une action contre les gérants ou contre les membres au conseil de surveillance et de les représenter en ce cas en justice, *sans préjudice de l'action que chaque actionnaire peut intenter individuellement en son nom personnel.*"

[1] "Attendu que c'est à tort qu'ils ont autorisé le prélèvement des dites sommes au mépris des décrets susvisés. . . . Qu'en agissant ainsi . . . il ne saurait être douteux que leur responsabilité personnelle est engagée."

[2] New edition, London, 1894, p. 65. See, too, for a brief account, Politis, *loco citato*, "La Caisse de la Dette Egyptienne, ses pouvoirs et sa responsabilité."

question raised at the commencement of this litigation was one which still remains undecided, viz. whether unanimity is necessary, for the validity of the decision of this body, or whether a simple majority is sufficient.[1] Inasmuch as both the Cairo Tribunal and the Alexandria Court of Appeal came to the conclusion that even an unanimous vote would have been *ultra vires*, under the circumstances, it was unnecessary to decide this question; but they were compelled to come to a definite conclusion as to whether the minority could sue the majority, in the event of such minority considering that the interest of the bondholders were being jeopardized by the action of the majority, and both courts decided the question in the affirmative.

The ground of the decision in the Court of Appeal was an alleged modification, by Article 38 of the Law of Liquidation, of Article 4 of the decree of May 2, 1876. The latter article gives "the Caisse and on its behalf, its directors" (la Caisse et pour elle ses directeurs), the right to sue the Egyptian Government. By Article 38 of the Law of Liquidation this right is conferred on "the commissioners of the debt, the legal representatives of the bondholders." The difference of language is slight, but the Court declared that "it is impossible to understand with what object the authors of the law of 1880 should have modified the terms of Article 4 of the decree of 1876 if they did not intend to explain, by that modification, that each commissioner, taken individually, had the power of acting in defence of the interests which were confided to him." This is certainly rather a weak peg on which to hang so momentous a decision, and Lord Cromer's comments on it, in his despatch to Lord Salisbury (Egypt, No. 1, 1897, p. 42), seem fully justified. His lordship says—

"In so far as this intention is based on the presumed intentional change in the law, I venture to challenge its accuracy.

"I took an active part in the negotiations which eventually resulted in the issue of the Law of Liquidation. If any intention had at the time existed to change the law in the manner now indicated by the Court of Appeal, it is almost inconceivable that I should have been ignorant of the fact.

"I can most positively state that I never heard of any such intention. The only one of those who took part in the negotiations to whom I am at present able to refer is Boutros Pasha Ghali, who was the Egyptian Delegate on the Commission which framed the Law of Liquidation. He fully confirms my view. No mention of any

[1] Cf. Article 8 of the Decree of May 2, 1876: "Le gouvernement ne pourra, sans l'avis conforme des commissaires . . . *pris à la majorité*, porter dans aucun des impôts . . . des modifications," etc. On the one hand, it is said this is the rule because it is laid down in the *organic and fundamental law* establishing the Caisse. On the other, that it is the exception, since, *being the organic law*, it would have stated the rule generally if such had been the intention, instead of confining it to a particular case. *A contrario*, therefore, it is argued, the rule is unanimity. There seems to be no other legislative provision bearing on the subject.

such intention is made in the report on the proceedings of the Commission addressed by its President, Sir Rivers Wilson, to Earl Granville on the August 14, 1881. I have examined the minutes of the proceedings of the Commission, as also all the documents existing in the archives of the British Agency bearing on the Law of Liquidation. I have been unable to find any allusion to the reasons which induced the Commission to propose the change now under discussion.

"On an important matter of this sort it surely behoved the Judges, before interpreting the law and attributing intentions to its authors which certainly do not appear on the face of the document, to have established some proof in support of the view which they have adopted. They do not adduce any proof. They appear to have proceeded entirely on assumption, and to have placed a strained interpretation on the Decree in order to justify their subsequent conclusion.

"To say that it is impossible to understand ('on ne saurait comprendre') why the change was made, if it were not for the reason given by the Court, is surely an inconclusive argument. Indeed, it would appear to be the argument of an advocate rather than that of a Judge. If any such change as that supposed by the Court to have been made had been intended, it is improbable that there should be no contemporaneous record to show that the intention of making the change existed, or, at all events, that the question formed the subject of discussion. The natural explanation, in the absence of record, is that the matter was considered unimportant. It was certainly never, to my knowledge, discussed.

"It is worthy of remark that, in a Judgment delivered by the Court of First Instance of Cairo on the December 9, 1884, allusion is made to Article 38 of the Law of Liquidation as if it were a mere reproduction of Article 4 of the Decree of the May 2, 1876.[1]

"In point of fact, however, without resorting to the somewhat laboured explanation of the Court, it is easy to form a reasonable conjecture as to why the change of words was introduced. It almost bears on its face evidence that it was the change of a draftsman, not of a legislator. 'La Caisse, et, pour elle, ses Directeurs,' is a somewhat clumsy expression. The Commissioners of the Debt were never, from the first creation of the institution, generally called 'Directors.' They were styled 'Commissioners.' It was therefore perfectly natural that, when the fundamental laws regulating the finances of Egypt were in course of being remodelled, the ordinary, rather than the unusual, nomenclature should be adopted, and that the language which embodied the intentions of the Legislature should undergo a trifling improvement. This I believe to be the true explanation of a circumstance to which the Court of Appeal have attached a weight out of all proportion to its intrinsic merits and on which they have based an important part of their decision."[2]

But here again we venture to think that the Court has come to the right decision, though upon the wrong grounds.

The true reason, it is submitted, for giving any member of the Caisse the right to sue the others, if necessary, is to be found in the intrinsic character of that institution itself and the objects for which it was established. In point of fact, the Commissioners of the Caisse act in a dual capacity, are invested with a double personality, and this distinction probably furnishes the right solution to the still unsolved

[1] The words are "cela résulte . . . des termes mêmes du Décret du 2 Mai, 1876 (Article 4) qui, tout en énonçant la règle reproduite dans l'Article 38 de la Loi de Liquidation, ajoute . . . etc."

[2] See also those of Sir John Scott, the Judicial Adviser to the Khedive, ibid. p. 40.

problem of unanimity or majority.[1] In so far as the Commissioners merely act as the legal guardians appointed to control the Ministry of Finance in the interests of the bondholders and meet at intervals for the purposes of the routine and everyday administration of their business, they sit like any other board of administrators, and vote by a majority, as it has, in fact, been their practice to do. But whenever the matters for decision rise above considerations of a purely administrative character, and touch, even indirectly, upon questions of an international nature, or in any other respect *vitally* concern the interests of the bondholders at large, as was undoubtedly the case in the instance under discussion, the Commissioners are really the agents of the Powers they represent, and a majority can no more bind a minority on such questions than a majority of plenipotentiaries at an International Congress could compel a dissentient minority to adhere to a Convention. Such, we submit, is the true view of the matter, and to decide otherwise would be a violation of the principle of the sovereignty and independence of nations. Accordingly, if in such questions the majority, ignoring the protests of their colleagues, take the law into their own hands, overstep their powers, and jeopardize the interests they were appointed to defend, the minority are entitled to set in motion that legal machinery which, as we have seen, has been expressly provided by the codes for redressing such or similar grievances.[2]

III.—Merits of the Case.

The last question for decision was, assuming jurisdiction and power of the minority of the Commissioners to sue, had the Government exceeded its powers by applying this money with the consent of a majority of the Caisse, to the expenses of the Dongola expedition?

The answer to this question depended upon the construction to be placed upon Article 3 of the decree of July 12, 1888. This article is as follows:—

"Le fonds de réserve est destiné:—

"1. En cas d'insuffisance des revenus affectés à parfaire les sommes nécessaires au service des dettes dont la Caisse est chargée.

"2. À combler l'insuffisance des revenus non affectés, pour pourvoir

[1] An argument in favour of unanimity has been sought by some critics in Article 635 of the Egyptian Civil Code (Code Civil Mixte). "Quand plusieurs mandataires sont désignés dans le même acte sans qu'il leur soit expressément donné pouvoir d'agir séparément ils ne peuvent agir que collectivement." But this provision of pure civil law can hardly supply a reliable argument in the case of an anomalous public body like the Caisse de la Dette.

[2] Cf. a judgment of the Cairo Tribunal of December 9, 1894, quoted in the *Compte rendu de la Caisse* for the year 1884, pp. 113 and 122. See, too, Pelissié du Rausas. *Revue générale de droit international public*, 1895, pp. 234–236.

aux dépenses prévues par l'article 18 du décret du 27 juillet, 1885, et autres consentis ou à consentir par les puissances.

"3. *À des dépenses extraordinaires* engagées conformément à l'avis préalable de la Commission de la dette . . ."

What meaning is to be attached to the expression "*dépenses extraordinaires?*"

In the first place, it is to be observed that, according to the decree of July 27, 1885, Article 21, above mentioned, the excess of revenue upon certain accounts mentioned in that article was to be applied, as to one half to the Government budget for administrative expenses, and as to the other half to the service of amortisation of the debt. Subsequently it was thought preferable to insure the regular payment of the coupon, rather than to provide for an intermittent service of amortisation; and accordingly it was decided that this second half should go to form a general reserve fund up to the amount of £E.2000,000, and thereafter, that the service of the amortisation should be resumed. In pursuance of this decision, Article 4 of the decree of July 12, 1888, provided:—

"L'amortissement des dettes sera repris dans les conditions énoncées à l'article 22 du décret du 27 juillet, 1885, dès que le fonds de réserve aura été intégralement constitué, pour être suspendu de nouveau quand et tant que, par suite des prélèvements opérés en vertu de l'article 3 ci-dessus, son capital sera inférieur à £E.2000,000."

The sources of this reserve fund were therefore derived from revenue which had previously been applied to amortisation, that is to say, which had been applied for the benefit of, and belonged to the creditors; and it would seem to follow that this reserve fund was established exclusively in the interests of the creditors, and that the "extraordinary expenses" referred to were to be such as would be of benefit to them and ultimately productive, such as public works, irrigation, etc.

This was the view taken by the Cairo Tribunal;[1] but the obvious objection to this theory, as a criterion, is the difficulty of agreeing what expenses would be productive and for the benefit of the creditors and what would not. The Court of Appeal, after premissing that this decree of 1888 was a contract between Egypt and the Powers—as to which there can be no doubt—lays down the well-established principle that, for the interpretation of a contract, one must regard the intention of the parties at the time, and then proceeded to state that, inasmuch as there was no mention in the correspondence between the Egyptian

[1] See the terms of the judgment above, p. 393, quoting the terms of the negotiations between the Government and the Caisse, prior to the establishment of this Fund, which certainly seem to lend colour to the view taken by the Tribunal. The latter also quotes, in favour of its opinion, a similar passage taken from Sir Alfred Milner's book.

Government and the Powers, at the time, of the possible employment of this fund for the reconquest of the Soudan or any part of it, an outlay for such a purpose cannot be considered to have been contemplated, under the head of "extraordinary expenses," by the contracting parties, and is accordingly illegal.[1]

On the whole, we are disposed to agree with the Court of Appeal that this matter is rather a question of fact than of law, and that the intentions of the parties at the date of the decree affords a surer criterion of the real meaning of the expression than the most subtle chain of reasoning founded on more or less logical deductions from the context of the decrees.

Unfortunately it would no doubt have been impossible to obtain reliable and impartial testimony from *all* the parties concerned, as to the meaning they attached to the expression at the date of the decree; but there was at any rate one most valuable witness whose evidence would no doubt have been at the disposal of the Court, had it been asked for, who took an active part in the negotiations which resulted in the issue of the decree of July 12, 1888, and whose honour and integrity are above suspicion. We allude, of course, to that great man, her Majesty's representative at Cairo, of whose magnificent work in Egypt every patriotic Englishman is justly proud, and with whose most pertinent observations upon this question we will conclude this paper:—[2]

"It would be an exaggeration to say that there was at that time any fixed intention on the part of any one concerned in the negotiations to apply a portion of the Reserve Fund to the reconquest of the Soudan. But it may be said with perfect truth that from the time the Egyptian troops withdrew from the Soudan, it has been clear to every one who has paid any special attention to Egyptian affairs, that in all probability the reconquest of the lost provinces would sooner or later be undertaken. The doubtful point has been at what time it would be possible or desirable to make a move in this direction. In 1888 everything pointed rather to the conclusion that it would take more than eight years to develop the military and financial resources of Egypt to such an extent as to justify the abandonment of a purely defensive policy. At the same time it is within my personal recollection that in 1888 the possibility of applying the money of the Reserve Fund to the Soudan expenditure was at times mentioned in Egyptian Government circles. Whether any discussion on

[1] The conclusion the Court drew from this argument was that the only works contemplated as coming within the terms of the decree were "les travaux nécessaires destinés à augmenter dans un intérêt général la richesse du pays." It might be argued, with some degree of plausibility, that the successsful expedition to Dongola, if not strictly speaking a "*travail*," was certainly an "*opération*" which, at any rate, *ex post facto*, has materially "augmented, in the general interests, the wealth of the country." But, of course, the obvious answer is, that a campaign, of which the issue is doubtful, is not a desirable outlay, in the interests of the creditors, if that is to be the criterion.

[2] See Egypt (No. 1), 1897, p. 43.

this subject took place outside those circles is more than I can say. There is no reason why it should not have taken place. No special attempt was, as far as I am aware, made to secure secrecy. On the other hand, it was not thought necessary to allude specifically in the Decree to a contingency which was at that time considered remote. Moreover, had any suggestion been put forward that specific allusion to Soudan expenditure should be made in the Decree, it would almost certainly have been rejected. At that time a considerable body of public opinion both in England and Egypt was in favour of an early reconquest of the Soudan. On the other hand, those who were mainly responsible for the conduct of Egyptian affairs were anxious to avert premature action, and would certainly have thought it inexpedient to insert words in a public document such as the Decree of the 12th July, 1888, of a nature to encourage hopes which, for the time being at all events, were incapable of realization.

"The Court, however, argues that the intentions of the Egyptian Government in 1888 are unimportant, inasmuch as those intentions were never communicated to the Powers, who were asked to assent to the Decree.

"If it could be shown that the Powers were at the time ignorant of the full scope of the Decree to which they agreed, and that an attempt was made in 1896 to distort the intentions which existed in 1888, there might be some force in this argument. But I venture to think that the contention that one Contracting Party (the Egyptian Government) was aiming at an object contrary to the wishes and intentions of the other Contracting Parties (the Powers) cannot be proved, save by a resort to *ex post facto* arguments, which are valueless as evidence of the intentions existing at the time the arrangement of 1888 was concluded.

"In order really to understand the intentions of the Contracting Parties in 1888, it is necessary to dwell briefly on the facts of the general financial situation as it then existed.

"At that time the solvency of the Egyptian Treasury, which had been imperilled, was assured. On the other hand the financial arrangements concluded between the Egyptian Government and the Powers were such that, whilst considerable sums were likely to remain at the close of each year in the hands of the Caisse de la Dette, the Egyptian Government had barely enough money to carry on the administration of the country efficiently. Under Articles 21 and 22 of the Decree of the 27th July, 1885, any surplus remaining at the end of the year in the hands of the Caisse de la Dette was to be devoted to the extinction of the debt.

"It was under these circumstances that it occurred to Sir Edgar Vincent and Mr. (now Sir Elwin) Palmer that it would be to the advantage of all who were in any way concerned in the welfare of Egypt to suspend the operation of the sinking fund, and to allow the money thus economized to accumulate, partly with the object of constituting a reserve fund to meet any unforeseen contingencies which might occur, and partly in order to enable money to be spent on such objects of public interest and utility as were beyond the normal annual resources of the Egyptian Treasury.

"The question then arose as to the manner in which the reserve fund should be administered. On the one hand it was obvious that the Powers would demand some effective guarantee of good administration. On the other hand, it was desirable to obviate necessity, on each occasion when some proposition involving expenditure was brought forward, of referring to all the Governments who collectively exercise certain legislative functions in Egypt. Experience had proved that legislation by diplomacy was always a tedious process, and that the necessary unanimity was rarely secured.

"Under these circumstances it was proposed to utilize the services of the Caisse de la Dette. The Commissioners are appointed, in fact if not in name, by the Six Great Powers of Europe. They are resident in Egypt, and can bring a greater amount of local knowledge to bear on any question submitted for their consideration than would

be possible to others residing at a distance. It is in the highest degree improbable that they would ever agree to any measure detrimental to the foreign creditors of Egypt, whose interests they are specially charged to defend. A cardinal point of the Egyptian proposal was, therefore, that the Powers should delegate to the Caisse de la Dette certain functions which they had heretofore exercised directly.

"It was clear that, in order to provide for all possible unforeseen contingencies, the widest latitude would have to be given in the definition of the objects to which the money belonging to the reserve fund might be applied. The Court of Appeal now maintains that, inasmuch as war expenditure was not specifically included amongst those objects, it is therefore to be inferred that, in the intention of some, at all events, of the Contracting Parties, it was virtually excluded. I venture to think that this is a strained interpretation of the law. There is not one word in the text of the Decree of the 12th July, 1888, from which it can be inferred that the term 'extraordinary expenses' should be interpreted as 'purely administrative' expenses. Further it may be established, by reference to contemporaneous documents, that the Egyptian Government, in laying their proposal before the Powers, never contemplated that any such limited interpretation would be given to the phrase.

"On the 19th January, 1888, Nubar Pasha wrote to the Commissioners of the Debt in the following terms:—

"'Pour pouvoir parer aux diminutions de revenus ou aux charges extraordinaires qui à la suite d'événements imprévus peuvent déranger l'équilibre de son Budget, le Gouvernement Egyptien . . . . a résolu de constituer un fonds permanent de réserve, destiné à parer â toutes les éventualités . . . .'

"To what charge can the term 'extraordinary' be more fitly applied than to a war charge?

"What event can more properly be described as unforeseen (imprévu) than a military expedition?

"What definition can be more comprehensive or less capable of subsequent qualification than one which says that a fund is to be created which is to be used to guard against 'all eventualities' (toutes les éventualités).

"Again, in a Circular to the Powers dated the 3rd March, 1888, Nubar Pasha wrote—

"'Le Gouvernement de Son Altesse le Khédive vient de décider la création d'un fonds de réserve en vue de parer aux diminutions de revenus ou aux charges extraordinaires qui peuvent accidentellement déranger l'équilibre budgétaire de l'État.'

"What charge can more properly be characterized as 'an extraordinary charge which might accidentally derange the Budgetary equilibrium of the State' than the expenses of a successful war, from which not only the Egyptian but also all who are interested in Egyptian finance will, I venture to assert, in one form or another, derive considerable benefit?

"In fact, the only plain and rational interpretation which can be placed on the Decree of the 12th July, 1888, is, first, that the Egyptian Government proposed to give an unlimited discretionary power to the Caisse de la Dette to decide what was and what was not an 'extraordinary expense' which might properly be paid out of the reserve fund; and, secondly, that the Powers agreed to this proposal without qualification of any kind whatsoever.

"In answer to the plea that, if the Egyptian Government intended to include war expenditure in the term 'extraordinary expenses' they should have said so at the time, it may reasonably be replied that, if any of the Powers had intended to exclude war expenditure, they should at the time have announced their intentions, and that, in the absence of qualification, the text of the law should be interpreted literally.

"The Court, however, have thought otherwise. They have laid down the principle

that, in the interpretation of Conventions, regard should be had to the spirit rather than to the letter of the document binding the Contracting Parties, and they have then come to a conclusion which is certainly not supported by the letter, and is, I venture to think, contrary to the spirit of the Convention which they have interpreted. They have, indeed, done more than this. They have come to one conclusion which is certainly contrary to the intentions of some, and, perhaps, of all, the Contracting Parties at the time of making the Convention, and that is, that the decision on a financial question, such as that now under discussion, rests with the Mixed Courts and not with the Caisse de la Dette.

"Now that the Judgment of the Court has been executed, it may, perhaps, be thought useless to advance arguments of the nature of those stated above. Nevertheless, there is at least an academic interest in examining the reasons upon which the Court has based its conclusions."

Since, the Court of Appeal had come to the conclusion—rightly, as it is submitted—that this question was one of pure fact, and of the intention of the parties to the contract at the time it was entered into, it seems regrettable that they were unable or unwilling to avail themselves of the testimony of one who, by reason of his participation in that contract, and in the negotiations which preceded it, was pre-eminently fitted to enlighten them as to its true meaning, and whose evidence concerning it was entitled to, and could not have failed to carry, the very greatest weight.

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